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THE MAGISTRACY AND GOVERNMENT OF ENGLAND VINDICATED.

In Three PARTS.

CONTAINING,

I. A Juſtification of the *Engliſh* Method of Proceedings againſt Criminals, *&c.*

II. An Anſwer to ſeveral Replies, *&c.*

III. *Several Reaſons for a General Act of* INDEMPNITY.

Sir Bartholomew Shower.

Printed in the Year MDCXC.

The Magiſtracy and Government of England *Vindicated; or a Juſtification of the* Engliſh *Method of Proceedings againſt Criminals, by way of Anſwer to the Defence of the late Lord* Ruſſel's *Innocence*, &c.

IN the preſent Age, when the variety and multiplicity of new Prints is ſuch, that the money and time required for their purchaſe and peruſal, is more than an ordinary Gentleman can reaſonably allow; it may deſervedly be thought a Nuſance to the publick to have their numbers increaſed, eſpecially ſince the Complaint of the ingenious Authour of the Trimmers Character, that for this very cauſe he could almoſt have wiſhed himſelf unable to read; but yet the Support of Magiſtracy and Government is a noble Theme, ſo uſefull to the publick, and ſo generally agreeable to the humour of Mankind, that the mere Subject will (I preſume) be an Excuſe for this Publication, if any thing can be ſo.

At this time of day none would have thought that a neceſſity ſhould happen of writing upon ſuch a Topick, when every *Engliſh* Proteſtant was entertaining himſelf with the pleaſing Proſpect of impartial, due, and indifferent Adminiſtrations, when Authority was becoming amiable and eaſie to the People, when the People were inclining to a zeal and affection for the honour of Magiſtrates; in ſhort, when the Law was recovering its clouded Credit: in this Conjuncture none expected to ſee all the Pillars and Poſts in the Town daubed with plentifull Title Pages (like ſo many Hiſtriomaſtrixes of *Will. Prinn*'s) directing their Spectators to Books of Obloquy and Reproach, not only on the Perſons and Opinions, but the Authority of Judges; when neither of the three are corrigible, or ſo much as cenſurable any otherwiſe than in and by a Parliament; much leſs was it expected, that a Gentleman of the long Robe would appear in Print to ridicule their own Profeſſion, and expoſe our Law even to the Scorn of Foreigners. It would not have been ſo very ſtrange to have ſeen a Doctor of the Commons exerciſing his Wit and Railery on the Common Law Proceedings when he ſaw his deareſt *Diana*, I mean his Excommunication Proceſs, in danger of becoming uſeleſs, and a fair occaſion given him for ſuch an Eſſay from the Diſguſt of the People againſt *Weſtminſter* Hall.

But none imagined that Satyrs and Invectives upon paſt Proceedings ſhould be writ by Lawyers, who expect a farther Benefit from their Profeſſion by the Grace and Favour of the Government, which if they happen to acquire, according to their Expectations, I would only remember them, that Mocking is catching in the Proverb. There was once upon a time a certain Maſter of Arts, who, whilſt at *Cambridge*, did ridicule and expoſe the Clergy of the *Engliſh* Church, by writing the pretended Cauſes of their Contempt; but the *Templers* ſaid, that he, whilſt at *London*, did give an occaſion for a third Part to the ſame Tune, or at leaſt a new Edition of the Book, with Additions by the Authour himſelf, even of his own dull —— as proper for the like uſe. In petty Corporations they who have moſt complained of others hardſhips have frequently outdone their Predeceſſors, when once they have got their places. A whining complaining Servant doth often prove a peeviſh imperious Maſter; and I am ſure, in the Inns of Court, the moſt noiſie, troubleſome and mutinous Students and

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Barriſters make the ſtiffeſt and moſt magiſterial Benchers. I make no application, but I leave the Reader to doe what he pleaſeth. Better things are to be hoped of all concerned in publick Government.

Since the Preſs ſeems open, and Lawyers Books are publiſhed without a Licenſe, another may aſſume the ſame Liberty with equal Authority, and with more Reaſon, when his Province is only to correct the Miſrepreſentations of Things, Actions, and Perſons, though made by Authours of Age, Experience, Figure, and Learning, (I will not ſay Candour or Honeſty,) eſpecially ſince they are private Men, and having vented their own Thoughts in Print, they remain no longer theirs, but are equally expoſed to the Cenſure or Applauſe of every Reader. Beſides, 'tis generaly preſumed, that an Authour expects a publick Animadverſion, or otherwiſe he would never have become ſuch. He preſumes his Arguments irrefragable, and then an Anſwer does him no miſchief; and if they are otherwiſe, he deſerves it. And ſurely he ſtands as liable to be corrected by others, as others were to be cenſured by him. And it is more warrantable certainly to write and print for the Vindication of former Proceedings, than it can be either candid or gentile to arraign or expoſe them; eſpecially ſince to do ſo, is and muſt needs be miſchievous to paſt, preſent, and future Governments, as Experience will unqueſtionably teach us; but the other is and will be of ſervice to future Adminiſtrations, by maintaining the Reputation and Credit of Judiciary Proceedings.

It is well known, that the Lord *Ruſſel* being ſo unfortunate as to fall under the accuſation of Treaſon, was the moſt pitied of any under thoſe Circumſtances, by all who knew either his Family or perſonal Character; great expectations were then had of the Iſſue of that Tryall, the Event gave great occaſion for Diſcourſe afterwards, and almoſt ever ſince; the printing of his laſt Speech, with the ſeveral Anſwers to it, did much augment the Talk. It cannot but be remembred how various and different the Sentiments of moſt were upon that Subject; the Debates concerning it generally concluded in a pity to his Perſon and Relations, as a great Misfortune upon both, and in truth upon the Nation, that a Gentleman of ſuch Qualifications ſhould be guilty of ſo much Inadvertency (to ſay no worſe) as to engage ſo frequently in ſuch Conſults as he unhappily did. Some blamed the Jury, moſt cenſured the Witneſſes, but very few arraigned either Counſel or Court; and in truth the fairneſs and indifferency of that Trial was ſuch, that his own Relations were pleaſed, and his Enemies angry with thoſe that then ſate upon the Bench; and thus it continued till the preſent Revolution.

Then the Memory of that unfortunate Gentleman was revived by the publication of a Defence of his Innocency; the Name ſubſcribed to the Title-page is ſo great, that I ſhould be affraid to proceed, but that I am reſolved not to be known; and therefore if any thing falls from my Pen indecent or diſreſpectfull, he muſt excuſe it as a privilege claimed by Authours, eſpecially of Books that have no Name to them.

To begin at the end; for what purpoſe was that Pamphlet printed?

It could not be for the good of the Nation, as a means for conſumption of Paper; for, as I have been told, that's a *French* Commodity.

It could not be for the Bookſeller's profit only, for a reaſon to be gueſſed at.

It could not be for the ſake of that Lord's Memory, or any of his ſurviving Relatives; for no Man will think it a ſervice to them, to renew the thoughts of that unhappy accident in ſo noble, ancient, and worthy a Family. In truth, the whole Treatiſe

tiſe is nothing but a painting to the life the too deep concern of that Branch on't in a weak as well as criminal Enterpriſe; for what elſe doth ſignifie the Expreſſion, *pag.* 4. that being preſent at a Conſult of Traitors a ſecond time, or oftner, raiſes a ſtrong ſuſpicion, that the party who does ſo, likes it, conſents to it, and approves it; or elſe he would have forborn after his having been once amongſt them. And many other ſuch Expreſſions there are with the like Reflections, as *pag.* 7. that *Rumſey* and *Sheppard*, the two firſt Witneſſes, *&c.* raiſe a ſtrong ſuſpicion upon my Lord, and make it probable that he was guilty. And in the ſame Page the Author ſeems to agree him guilty of Miſpriſion. And *pag.* 17. he re-publiſhes the Evidence of *Rumſey*, that there was a conſent, and this the Author agrees to be High Treaſon; but he then endeavours to invalidate the Credibility of that Evidence, by ſhewing the wildneſs of his own memory. Now how this could ſerve the Reputation of the Deceaſed, or cure the Reſentment of his Relations upon that account, I confeſs my ſelf utterly unable to imagine. Nor can any Reader ſuppoſe the Title verified by the Book, *viz. A Defence of Innocence*, when there's not one word to be read of it but in the Frontiſpiece. Surely there's no thanks due to the Author from that Family, no more than was an extraordinary Fee due to that Lawyer who pleaded for a Defendant to this effect: *My Client, I muſt confeſs, is a Wag, but not ſo great a Wag as the Counſel of the other ſide would repreſent him; their proof is very ſtrong, but not ſo ſtrong as they would boaſt it to be; our Defence is but dark and weak, but not ſo weak as they would argue it.* So that the Book could not be writ for a Service to that Family, unleſs a conceſſion of Guilt can be called *a Vindication of Innocence.*

It could not be for the ſake of the Government; for it can never be deemed a politick Service to rake into old Sores, when lenifying and moderate methods are more adviſeable; and if every thing ſhould be re-publiſhed which hath given diſguſt to the People, few would eſcape the laſh, the righteous themſelves would ſcarcely be ſaved, for abundance of them have tript either in their publick or private converſation, and ſome in both, and that notoriouſly too: I name no Body. Beſides, the Government muſt of neceſſity never allow the Doctrines divulged in this Pamphlet, unleſs 'tis intended that its being and continuance ſhall be as precarious as a *Beneplacito* Judgſhip, and as dependent upon the Peoples humour as that is upon the King's: nor can any Government countenance and encourage the Arraignment of a conſiderable number of wealthy worthy Citizens, with the Printed Cenſure and Inſinuation of their being a parcel of corrupt, ignorant, injudicious, diſhoneſt and partial Fellows, and this is done to the full, when ſaid, that the contrary would have ſworn to a not guilty, or at leaſt wiſe they ſhould, if the Author had been there. But moſt of his Readers are of another opinion, notwithſtanding the ſecond Letter, *pag.* 7.

It could not be for the ſake of popular Applauſe; for it's thought, that the Treatiſe will never deſerve or procure it, eſpecially if you take it in pieces, and conſider them apart, and with ſober Reflections. So that no Man can tell what it was writ for.

When the Title of the Book, and Name of the Author was firſt publiſhed, Mankind was full with a pregnant expectation of ſome rare, abſtruſe, uncommon Learning upon the Point of Treaſons with which the World was before unacquainted. No Man looked for a Preachment concerning the Body and Blood of our Saviour, the World to come, and the Guards of Heaven, as Topicks proper for an Animadverſion upon that Trial, eſpecially from ſuch an Author. But there's nothing ſtrange under the Sun

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The Preface is an Encomium upon the Author himſelf, declaratory of his readineſs for publick Services, and ſeems to be calculated for a Cooler, or a Defence againſt the Heats and Rigors of an harſh and oppreſſive Government, for an help to ſuch as may poſſibly hereafter fall into the like danger and trouble: and to teach the People the fear and jealouſie of a poſſibility of ſuch Occurrences again, can never be thought a publick Service. As to part of the Preface, it is ſo dark, that a ſlender underſtanding can never reach the ſenſe of it, I mean that long Paragraph, *The Copies of*, &c.

The firſt Letter begins with a ſeeming ſhew of a bold reſolution in the Author to perform the Duty of a Friendly Council, maugre all the inconveniencies that might happen to himſelf thereby. But it concludes with an extraordinary caution and care to prevent all danger, even to ſuch a degree as much diminiſhes the credit of that invincible and heroick Reſolution at firſt boaſted of. And if his Courage had been ſo ſtrong, why were not theſe Letters publiſhed formerly, and in times when in the Author's judgment there was more occaſion for their uſe, than the preſent can poſſibly afford? But rather it may be again asked why are they Printed at all, the Obſervations contained in them having been Printed not above 500 times already, and perhaps with as much advantage? Was it a Secret to the World, that a variance between the Indictment and the Evidence might be alledged on the general Iſſue? Did no Man in Town know that Treaſon and the Miſpriſion of it are different Crimes? Is the diſtinction between them ſuch a new invention, and ſo very uſefull, as to be an equivalent for the want of Council in capital Trials, as the Preface and Letter do inſinuate, if they do any thing? Who ever doubted, but that proofs of Treaſon muſt not be by hear-ſay or argument only? Was it ever a queſtion for this hundred years, but that every Indictment of Treaſon muſt contain an Overt-act? Or that leſs than two Witneſſes was allowable for proof of that Crime? Or did any Man ever ſcruple but that *Keble*'s Statute-Book contains a true Copy of the 13. *Car.* 2. *cap.* 1. which requires Witneſſes credible? Now if theſe Queſtions muſt be anſwered in the Negative, how can the advice of theſe Letters be aſſiſtant to a better Defence, than was known long ſince?

The Book it ſelf begins with Stories of Tranſubſtantiation of Bodies, and Tranſmigration of Souls, as much to the purpoſe, as the Parſon's Text was to his Doctrine, who preached upon the certainty of a day of Judgment from that Verſe in *Geneſis*, *And Adam knew Eve, and ſhe conceived*, &c. But perhaps the Author intended all that firſt Page for a Flouriſh, and to entice his Reader into a patient peruſal of what follows, and prejudice him againſt the Sheet he pretends to anſwer. He is very frank in ſtyling it a Libellous Pamphlet, and the Author ſome rank bigotted Papiſt; but to what purpoſe no Man can divine, unleſs it were to expoſe him to the rage of the Mobile; but his Name was never poſted, and ſo he is ſafe from that danger.

The Aſſertions are two, that there was neither Charge nor Proof, that the Indictment and Evidence were both inſufficient.

I muſt confeſs, that it would be a mighty Addition to the Liberty of the Subject, to have the Law eſtabliſhed, and declared to be what the late Judge doth argue it is; for then there would be a freedom for Malecontents to endeavour their own ſatisfaction by Conſpiracies and Conſults, and that with impunity. But as the Law was, and always hath been taken to be, an *Engliſh* Subject hath very little colour for his pretence to ſuch a privilege as that Doctrine gives.

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The Indictment is, that at such a place and time *he did compass and imagine not only to deprive the King of his Government and Royal State, but to kill and put him to death, and to procure a miserable Slaughter amongst the King's Subjects*; *and to subvert the Government of* England, *and to raise a Rebellion against the King.* Then follows, *That to fulfill and perfect these Treasons and traiterous Imaginations, he, together with other Traitors, did then and there with them traiterously consult, conspire, conclude and agree to raise a Rebellion, and to seise and destroy the Guards of the King's Person,* contra, &c. Now whether these last acts be not a natural and genuine Evidence of the former, let any rational Man judge. But I will particularly prove, that this Indictment was sufficient to warrant the Judgment which the Court gave, and pronounced upon a Verdict, that the accused was guilty of that Fact in the Indictment, and then answer the Objections started against it.

First, there's a sufficient Treason alledged. And secondly, here's a sufficient Overt-act; both these I'll agree are necessary, and if either were wanting, the Indictment was naught. Now it must be agreed to me, that the first is clear and plain, for by the Law to compass or imagine the death of the King, Queen, or their eldest Son, is High Treason. It is true by the same Law some open act of which humane Justice can take a conusance is requisite to be proved; the very words of the Statute do expresly require it; and in truth it is no more than what must have been, had no such words been used; for thoughts are secret, and can never be arraigned, proved, or censured, any otherwise than as they are discovered by some Overt-act; so that that Clause requiring an appearance of the compassing and imagination by some Overt-act or open Deed, is no more than would have been impliedly requisite, had the Clause been omitted. 'Tis the imagination and compassing which is the Treason, that alone is the *Crimen lesæ Majestatis*, which is prohibited and condemned; the Overt-act is not the Treason, that's only a necessary Circumstance, without which no Court can ever take conusance of the other. And it is necessary to alledge some such Deed, *à necessitate rei*, without respect to the words of that Statute. I insist the longer upon this, because it is used as an Objection, that the Clause of *proveably attaint by*, &c. is restrictive, whereas it is not so: for it is only to make that first specified Treason of Imagination and Compassing to be a thing intelligible and triable; and farther to prove this, it is considerable, that this Requisite of the Overt-act is of use and necessity barely, and only in the case of that which is first mentioned, *viz. Compassing*; for the other sorts of Treason are Acts themselves whereof notice may be had, as levying War, violating the Queen's Bed, and the like; and in an Indictment you need only alledge the Facts themselves, as that there was a War levied, there was a carnal knowledge had, and the like. And this farther appears from the very Form of Indictments used ever since that Statute; for there never was an Indictment (and if there were, it could never be good) barely averring an Overt-act without an expres allegation of the Compassing.

Then the matter results solely into this Question, Whether the Fact here laid be naturally and necessarily declaratory of the Parties Imagination to destroy the King; for if so, the Indictment is undoubtedly good; and it can never be called a constructive Treason, or a thing devised by the Judge's Interpretation of the Statute; for they adjudge no more Treason, than what the Statute declares, and that is an Imagination of the King's Death; now whatsoever is significative of a Man's intention or imagination,

tion, is a ſufficient Overt-deed to demonſtrate that that Man had ſuch intention or imagination; and whatſoever is expreſſive or ſignificative of a Mans intending, compaſſing, or imagining of the King's Death, is a ſufficient Overt act to prove and make ſuch a Man a Traitor within this Law. Now that a Conſult about, and an Agreement and Concluſion actually to ſeiſe the King's Guards, and raiſe a Rebellion, are a natural and genuine Declaration, that the Perſon who did ſo conſult, agree and conclude, did compaſs and imagine the Death of the King, is ſurely plain enough; for a Rebellion, if ſucceſsfull, can determine in nothing elſe but the King's Death, either Natural or Civil, which is all one within this Law; now he that deſigns and intends the neceſſary means naturally conducing to a particular end, that Man may certainly be ſaid to intend and deſign that end, *Cauſa Cauſæ eſt Cauſa Cauſati.* If the Deed tend and conduce to the Execution of the Treaſon, that's a ſufficient overt Act ſays *Coke* 3. *Inſt.* 12. and in the ſame Book, *fol.* 6. he hath theſe Words, *That he who declareth by overt Act to depoſe the King, is a ſufficient overt Act to prove that he compaſſeth and imagineth the Death of the King*; and ſo it is to impriſon the King, to get him into his Power; and to manifeſt the ſame by ſome overt Act, this is alſo a ſufficient overt Act for the intent aforeſaid.

In 3 *Inſt.* p. 12. 'tis held that a *Preparation* by ſome overt Act to depoſe the King, or take the King by force and ſtrong hand, or to impriſon him till he hath yielded to certain Demands, that is a ſufficient overt Act to prove the compaſſing and imagination of the King's Death; for that this, upon the matter, is to make the King a Subject, and to deſpoil him of his Regal Office; and ſo he ſays it was reſolved by all the Judges of *England*, *Hill.* 1. *Jac.* 1. in the Caſe of the Lord *Cobham*, Lord *Gray*, *Watſon* and *Clark*, Seminary Prieſts; and ſo he tells us in the ſame place, that it had been reſolved by the Juſtices in the Caſe of the Earls *E.* and *S.* Now if we conſider the reaſon why theſe were overt Acts of Treaſon, 'twill appear to be onely becauſe of their natural tendency to the accompliſhment of that particular Treaſon of compaſſing, which holds the ſame in the Authour's Caſe as well as in thoſe there mentioned.

A Conſpiracy with a Foreign Prince is agreed by my Lord *Coke*, *ib.*14. to be Treaſon, if it be to invade the Realm; and an overt Act of ſuch practice to be a ſufficient overt Act of a compaſſing the King's Death; and the reaſon is, becauſe ſuch Actions cannot be thought to be intended for any other purpoſe: and yet that particular Act may be accompliſhed, and it may ſo happen, as that the King's Death may not follow, and yet they are overt Acts of that treaſonable Imagination becauſe of their conduciveneſs and tendency thereto. The Caſe of Cardinal *Poole* was, writing a Book of the Pope's Supremacy, in which were contained Incitements of *Charles* the Emperor to an Invaſion of this Realm; and that was held an overt Act of imagining the King's Death. In the Lord *Cobham*'s and Sir *Walter Rawleigh*'s Caſe, a Conſpiracy, Conſult and Agreement to promote an Inſurrection and procure an Invaſion, was held an overt Act, 1 *Jac.* 1. and their meering, conſulting and agreeing, was laid as an overt Act, though diſcovered before the thing took effect. Dr. *Story*'s Caſe, which is mentioned by the Lords *Dyer* and *Coke*, was no more than a Practice or Perſuaſion to promote an Inſurrection and Invaſion, and the overt Act that was alledged was the Writing of Letters for that purpoſe; which is no more influential towards it, nor ſo much, as frequently meeting, conſulting and conſpiring, and at laſt concluding and agreeing to make an Inſurrection. The Caſe of Mr. *Coleman* was no other; for whatſoever the

Indict-

Indictment laid, the Evidence was onely of Letters to the like effect (as to this point) with thoſe of Dr. *Story*; and the Caſe of Dr. *Story* was before the 13 *Eliz.* which made a new Treaſon duri g her Life; for the Tryal was in *Hillary* Term, and the Parliament did not begin till *April* following. A Machination or Agreement to raiſe a Rebellion naturally tends to the Deſtruction both of King and People; and an Advice to it hath been adjudged ſo: as in the Reign of *Hen.* 4 one *Balſhal* going from *London*, found one *Bernard* at Plow in the Pariſh of *Oſley* in the County of *Hertford*; *Balſhal* told him that King *Ric.* 2. was alive in *Scotland*, (which was falſe, for he was then dead) and adviſed him to get Men, and go to King *Richard:* in *Mich.* 3 *Hen.* 4. *Rot.* 4. you'll find this adjudged Treaſon. *Throgmorton*'s Caſe is as plain, for his was onely a Conſpiracy to levy War within this Realm; he did not join in the Execution, and the Conſpiracy alone was declared to be a ſufficient overt Act by the Judges; 'Tis no Anſwer to it, to ſay, that a War was afterwards levied, for *quoad* him 'twas a bare Conſult; his Offence was no more than that In Sir *Henry Vane*'s Caſe, meeting and conſulting were alledged and held to be overt Acts. The Caſe of *Conſtable*, mentioned in *Calvin*'s Caſe, was onely an Act tending to depoſing the Queen, as diſperſing Bills in the Night, that *Edw.* 6. was alive and in *France:* and held an overt Act declarative of his compaſſing her Death, and he was executed for it: and in the Report of *Calvin*'s Caſe you have ſeveral other Caſes mentioned, where endeavours to draw Subjects from their Allegiance have been adjudged overt Acts of this ſpecies of Treaſon, The compaſſing, *&c.*

The word Compaſs in the Statute is of a larger extent than onely to mean an actual Aſſault on the King's Perſon, and an endeavour to cut his Throat; it moſt certainly implies any Conſult or Practice of another thing directly which may produce that effect, as the diſſuading People from their Fidelity; ſuch was *Owen*'s Caſe in King *Jac.* 1. his time, in the 13th. year of that Reign: this Advice was to this effect, That King *James* being excommunicated by the Pope, might be killed by any man, and that ſo to doe was no murther; for being convicted by the Pope's Sentence, he might be ſlaughtered without a fault, as an Executioner hangs a Criminal condemned by Law: and for this he was hanged as a Traitor. He that denies the Title to the Crown, and endeavours to ſet it upon another's Head, may doe this without a direct and immediate deſiring the Death of him that wears it; (ſo ſaid *Saint-John* in his Argument againſt the Earl of *Strafford*;) and yet this is Treaſon, as was adjudged in the Caſe of *Burton*, and in the Duke of *Norfolk*'s Caſe, 13 *Eliz.* This denying of the Title, with Motives, though but impliedly of Action againſt it, hath been adjudged an overt Act of Compaſſing the King's Death, as it was in *John Sparhawke*'s Caſe, *Paſch.* 3. *Hen.* 4! *Rot.* 12. The like was the Caſe of *John Awater*, who was indicted for a Treaſon of that nature in *Kent*, and the Indictment removed into B. R. *Trin.* 18. *Ed.* 4. ſee *Rot.* 17. and he was thereupon afterwards out-lawed as a Traitor; and ſo was *Thomas Heber* at the ſame time; and words ſignificative of an actual Intention have been held ſo, as are the Opinions of *Yelver.* 107. 197. *Aarthur Crohagan*'s Caſe, *Cro. Car.* 332. and abundance of others might be named as they are reported in our Law-Books, but I do not particularly mention them, for that their Authority in ſome of them is very ſlender, and may be ill uſed, to the ſtraining of raſh and unadviſed Words into a ſignification of a man's compaſſing, when perhaps the man never thought as he ſpoke: however all of them do evince, that adviſed and deliberate Preparations moving to

a danger to the King's Perſon, have all along been held overt Acts of a compaſſing his Death; and ſome of them prove, that Preparatives and Motives to the levying of a War have been held Treaſon, as was Sir *William Aſhton* of *Suffolk*, 31 *Hen.* 6. mentioned in *Cro. Car.* 119. for making Ballads reflecting upon the King, and writing Letters to the men of *Kent*, exciting them to riſe to aid the then Duke of *York*, &c. *ad guerram levandam*; and no mention of any War actually levyed. *Germain* and *Taylor*'s Indictment hath very little more in it mentioned than the like Preparations and Incitements to a Rebellion; and yet the Treaſon there laid was a Compaſſing of the King's Death, *anno* 2 *Edw.* 4. The Caſe of *Thomas Burdett*, in 17 *Edw.* 4. as at large it appears in the ſame Report of *Cro. Car.* amounts to no more than the Indictment in queſtion, *viz.* That he compaſſed the King's Death; and to accompliſh that Intention, he did diſperſe divers Writings, &c. *ad intentionem* that the People ſhould riſe and levy War, *&c.* the Judgment in that Caſe, Drawing, Hanging and Quartering: the like in *Collingbourn*'s Caſe, 2 *Rich.* 3. in the ſame Rep. 122. where he is indicted in like manner, for exciting and moving the People to an Inſurrection and War, and he incurred the like Judgment; which Caſes are infinitely ſhort of this in queſtion: and it cannot but be wondred that any man who has read them ſhould queſtion whether a conſulting and conſpiring about riſing, and an actual agreement and determination to riſe, be an overt Act of compaſſing the King's Death. In the very Tryal of the Lord *Stafford* it is affirmed by Sir *William Jones* (who was certainly of great Authority with the Authour) that the meeting and conſulting together is an overt Act, though the thing agreed on be never put in Execution; and 'tis there reſolved by the Judges that the ſame Treaſon may be proved by two Witneſſes to ſeveral overt Acts, though one ſpeak of Words or Actions that were ſpoken or done at one time and place, and another ſpeak of Words or Actions at another time and place; which argues that Words, much more a Conſult and Agreement, may make an overt Act. Even in the Caſe of *Stephen Colledge*, in which though the Tryal hath been cenſured, yet the Indictment never was, and in that Indictment the Treaſon is laid as in this Caſe, That he traiterouſly imagined and compaſſed the King to depoſe, kill and deſtroy; the overt Acts are, That he armed himſelf, and adviſed others to arm, and ſpoke ſeveral Words, *&c.* Here was no War levied, onely a Preparation, and yet that was allowed an overt Act: and as for the Words, if they are allowed to be one, with much more reaſon may Meeting, Conſulting, Concluding, and Agreeing to doe.

As to the Objection, Surely there is no weight in the firſt, which is *Page* 10. that criticiſes upon the word *fait* Act, and that 'tis onely a meeting to agree, and an agreement to doe, but 'twas not done: Suppoſe they had concluded and agreed to poiſon or ſtab, *&c.* according to the Opinion in that Page, this was no Treaſon; for 'tis onely agreeing and concluding upon a thing to be done, but it is not done. He doth in Page 13. argue that this can never be an overt Act of compaſſing the King's Death, becauſe levying War is a diſtinct ſpecies of Treaſon, and a conſpiring to levy War is not a levying War, and even levying War it ſelf cannot be aſſign'd as an overt Act of compaſſing, unleſs the Indictment were particularly for that: but ſurely another ſort of Act that favours of another ſpecies of Treaſon, if it naturally conduce to the accompliſhing of the firſt ſpecies, *viz.* that of compaſſing, it may be aſſigned as an overt Act of it; and Sir *Henry Vane*'s Caſe is quite otherwiſe, and there a levying War was the overt Act alledged of the compaſſing, and allowed by all the Judges;

and

and all the Indictments in the *Weſt* upon *Monmouth*'s Rebellion were ſo, and yet drawn by very good Advice; beſides, what Anſwer can be given to the Caſes which I have cited, where Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motives and Preparatives to an Inſurrection, have been held overt Acts of an Imagination of the King's Death, though no War was levied, though no Inſurrection was made.

'Tis apparent from what was ſaid before, that to take the King Priſoner, or to ſeize his Perſon, is a compaſſing of his Death; and if ſo, then to ſit in Council to conſpire the effecting of that, is an overt Act of a compaſſing the King's Death: and this Caſe amounts to, that here was a Conſultation to ſeize upon the King's Guards, which could tend to nothing but the ſeizing of his Perſon; and then the conſequence is plain. The Authour ſays, Page 14. If it had but been alledged in the Indictment, that in purſuance of the Conſult and Agreement, there had been a view of the Guards, and a Report made that the thing was feaſible, this would have been more to the purpoſe, how much more, no man can tell; for every Objection in the Book would have been as good againſt that as this. The great Objection he ſeems to rely on, is, That the Law takes no notice of them: for once I will ſuppoſe that it doth not, and then let us obſerve if any Argument can be drawn from thence: Perhaps the thing was not uſed or known when the 25 *Edw.* 3. was made. Can nothing be Treaſon if the Plot laid to accompliſh it be concerning a thing not in *eſſe* at the time of the Statute? Certainly it may. If ſeveral Malecontents ſhould conſult and agree and prepare (in order to an Inſurrection) to ſeize the *Tower*, *Portſmouth*, *Hull*, and *Plymouth* Fort, would not this be an overt Act of Treaſon? and yet our Law takes no notice of any Garriſons there or any where elſe; they have no relation to the Militia, nor were there any Arms in thoſe places in *Edward* 3. his time that we reade of in our Law-Books: if this be otherwiſe. Why did not the Authour find fault with *Rouſe*'s Indictment, which was tried much at the ſame time with this in queſtion. Suppoſe all the Gentlemen-Penſioners, Grooms of the Stole, Gentlemen of the Bed-chamber, and the like, killed in the Night, and the doors in *White-hall* broken up, and all the Swords, Muſquets and Piſtols there taken away, and yet it happened that the King's Perſon was left untouched; would this be an Act of Burglary and Murther onely? We have no Law-Books that take notice of Arms at *White-hall*, or ſuch Names as thoſe Servants go by: and ſuppoſe, at the ſame time, upon the Conſult, that the Conſpirators did move, diſcourſe, debate and conclude of an Inſurrection, would it not then be Treaſon? If not, nothing can be ſo, unleſs the King's Perſon be murthered or ſeized, and the Statute ſhould not have ſaid compaſs or imagine, but ſeize or kill, *&c.* It ſuffices then, that the Guards are in common Underſtanding known to be uſed and imployed for the Attendence upon and Preſervation of his Perſon. If common ſenſe and reaſon be Judge, no man can think but that he who intended to move an Inſurrection and ſeize the Guards, had a farther deſign upon the King's Perſon; and then 'tis Treaſon: if otherwiſe, a King of *England* is in a worſe condition than the worſt and meaneſt of his Subjects; for a King muſt not, cannot in or by our Law, aſſault, ſtrike, ſeize, attach, or impriſon in perſon, and conſequently cannot defend himſelf; and ſhall not his Servants, Guards and Attendents (which are all of the ſame nature) wear a Sword or carry a Muſquet before him? If they doe ſo, is it not then known that they doe it? If it be commonly known to be ſo, doth not he that ſeizes

and deſtroys thoſe Attendants, endanger the King's Perſon? And if that be ſo, the Inference is eaſie. It can never be, it will never be allowed for Law, that a ſeizing all the King's Guards is only a breach of the Peace, unleſs we renounce the Law, and will judge more by Inclinations and Partiſhips than by Reaſon and Precedents. As to the diſtinction between an actual ſeizing them, and a Conſult and Agreement to ſeize them, what I have urged before overthrows it; and what the Author ſays doth not maintain it, for both have a tendency to the execution of the Treaſon intended.

I will not take the pains to remark upon all the Inconſiſtencies of the Conceſſions and Denials in the Book, they are obvious to the Readers. As to his Quarrel at the King's Guards as an illegal thing, and terrible to the People, ſomewhat of the *French* growth, I hope the King will always preſerve them for his own perſonal Preſervation, notwithſtanding the Author's Opinion. As to his temporary Laws, which declare Words Treaſon, moſt part of them were affirmative of the old Law, and were made only in complement to a new crowned Head, when they prohibited nothing but what was before ſo: and for the reſt, no Concluſion could be made from them for the maintenance of his Aſſertion if he had repeated them; which ſince he does not, nor will I.

As to the Caſes cited by the Author of the Antidote (which I have mentioned,) he agrees to *Conſtable*'s Caſe, but does not diſtinguiſh it in its reaſon, from that in diſpute. He denies the Authority and Law of Dr. *Story*'s Caſe, which no body ever denied before him. He ſays that in the Lord *Cobham*'s Caſe there were People aſſembled, but gives not any Anſwer to what the Antidote affirmed, *viz.* that the Overt-act taken notice of in the little Book called *The Pleas of the Crown*, was only the conſpiring to make an Inſurrection. He doth confeſs, that in the Lord *Gray*'s Caſe there was only a Conſpiracy: He ſays, that in Sir *Henry Vane*'s and *Plunket*'s Caſe there were ſeveral other Ingredients to mount them to Treaſon, but what they were no body muſt learn, at leaſt not from the Author, for he names none of them.

He conſumes half a Page in an Encomium upon the Judiciouſneſs of that Court which made a conſcientious legal Scruple, Whether the Murther of a Miſtriſs by her Servant were Petit-Treaſon, by reaſon of the difference of her Gender? But at laſt he tells us, That the Judges of the Common Pleas did upon much deliberation ſatisfie thoſe of the King's Bench, that Maſter and Miſtriſs were in effect but one.

In the concluſion of the firſt Letter he ſays, That Conſpiring againſt the King's Perſon is moſt juſtly taken to be to conſpire againſt the King's Life; but in the Book he will not allow a conſpiring and agreeing to ſeize (*i. e.* beat and deſtroy) the Guards, which are ordinarily and commonly known to attend the King's Perſon, to be a conſpiring againſt his Perſon; which whether it be or not, the next Trial of this Nature will determine. Now after all, what can be a greater Reflection upon the Learning, Judgment, and Integrity of the King's Council, Judges, and Recorder, than to declare and publiſh in Print, that the firſt proſecuted, the ſecond tried, and the laſt condemned a Gentleman as a Traitor, when the Charge had nothing in't of that nature: If true, the bare Printing it is unbecoming the —— But as for their Reputations, let them juſtifie themſelves. The reaſon of my undertaking to explode ſuch a Reflection, was my own and every Man's Duty to the preſent Government, (the King and Queen's Majeſties being both concerned, and eminently too, in the conſequence of ſuch Doctrines) and a love to my Country-men,

that

that they may not presume upon the Authority of such a defence; for if they do, they may find their Mistake, when noozed through the power of Truth, the contrary Opinion.

As to the Proof I will not rake into it, since the Author hath represented too much of its strength, and *de mortuis nil nisi bonum*, it can never be thought a gratefull Province to debate or convince of Guilt; but yet I may say so much, that there was Evidence enough to justifie All concerned in the Prosecution and Trial, though for several Reasons the Attainder is fit to be reversed, but hardly for those which this Author mentions.

Since the writing of this Sheet, there came to my hands a Treatise calling it self *The Lord* Russel's *Case*, which savours more of Policy than Law, and his Topicks are the Rights of the People and Power of Parliaments; they argue the Author to be a greater Statesman than Lawyer, and therefore much too great for me to encounter; and a Debate concerning the Heads he insists on is neither safe nor allowable without doors. I shall make but three Remarks on what he says: First, He may assure himself, That that Power from which he argues his Law, is now apparently lodged in the Commonalty, not in the Nobility. Secondly, The King's Sollicitor (whom he reflects on) twittered more Reason and Law than yet hath been or ever will be answered: And thirdly, The Indictment contained no new constructive Treason, but only that which was plainly and directly declared in and by the 25 *Edw.* 3. if the Letters of it make Words, and the Words Sense, and one Man may be allowed able to read them as well as another.

Since the writing of the last Paragraph, there came to my hands another Pamphlet written by a new Observator; but I suppose the Judges that shall be will correct that sort of Licentiousness which he assumes in his Remarks: which if they do not, they'll have fine easie places on't as well as their Predecessors; and much good may it doe them.

Ætas parentum pejor avis, tulit
Nos nequiores, mox daturos
Progeniem vitiosiorem. Horat.

A Second Vindication of the Magistracy and Government of England, *by way of Answer to the several Replies*, &c.

IT is very observable, that since the late Revolution, nothing hath more disturbed our Peace than the Liberty of the Press: and amongst all our new Prints, the most malignant and mischievous Libels on the present Government, have been written by those Lawyers who pretend themselves the greatest Zealots for its Honour and Service, which may be suspected as false, unless it be withall considered, that some modern Royallists have nothing recommendatory of themselves, but the Miscarriages of others and others of them have such great ones of their own, that an Extenuation or Excuse is impossible, and therefore to cloud their own Deformities they would blacken other Mens Reputations, and in order to it they have censured Innocence, and arraigned Laws; and where a slip or fault hath been, though so small as scarcely to deserve the name of one, they have magnified it into an execrable Villany; and for a colour of such their Calumny and Slander, they have vented new Gospel and Law both: nay, they

they have broached such Notions to the World, as are directly fatal to that Crown of which they boast themselves the Makers and Supporters, and yet in doing so they pretend to merit ——

It is strange but true, for the Fact is plain, and the Consequence too: upon the present Change, the Republicans of both Gowns did deem it their Policy and Interest to bespatter and reproach other Mens Actions; and, like base and mean Spirits, gave ill names and words to every thing in which themselves had not been concerned, and made Reviling so customary, that it is become the modish Sin of the Age. It is most certain the old *English* Honour, Frankness, Ingenuity, and good Nature, is quite abandoned from some Companies and places in the Town, and instead of Folly, we have assumed a Vice in our common Conversation, instead of Drollery and Banter, the new fashioned Wit at ——'s allows nothing as acceptable but Lying and Slander; nay the very Spark of a Courtier hath changed his Note: Whereas fulsome, gross, and false Flattery was wont to be his Talent, he is now got to the other Extreme, *i. e.* revengefull, weak, and false Characters, both of Persons and Actions: Which is the worst is difficult to determine, but Falshood is the most predominant humour in both; and that Age is surely unhappy which is plagued with a Surfeit of either, especially when the Excess is so great as now, that no Gentleman can be thought a good Companion, no Clergyman a true Protestant, no Lawyer an honest *Englishman*, no Courtier a faithfull Servant, unless he can, and do rail and snarl, and scold, and that at things that were justly used in former times, and must necessarily be used in these times, and will be so in all times whatsoever, even in *Secula Secorum:* these little stinging Animals do value themselves upon their Honesty, because they find Faults, but it is in cases where no Eye can spie them but their own; they value themselves upon their Wit, because their censures are sharp and biting, but that is so easie, so very easie a Province, that Nature teaches even the rudest of her Breed to be satyrical, and the Natural oftentimes out-does the pretended Scholar in Ribaldry, and hath perhaps a better faculty that way than Fancy and Picquancy of reflection.

Now as the Fact is thus criminal and ridiculous both, so must the Consequence prove fatal to the Government which they would be thought (but intend not) to support; for when once resolved to arraign all past proceedings, they are forced for the maintenance of such their reflections to vent those Opinions, Doctrines and Rules in Divinity and Law, which have in every Age (save one) been justly exploded as destructive to the honour and being of the then Possessors of the Crown; and can conduce to no other end than the utter Subversion of this, and every other Government that doth but smell of a Monarchy.

It cannot be denied but in most Reigns there have been some occasions given for Disgust to the People, that Kings have born too hard upon their Subjects, that the Subjects have worthily complained of some Warps from the Law, but no Man ever with Sense pretended that this is a Reason to induce a Belief, that every Act of State, and every Judgment of Law in former times was Arbitrary and Unwarrantable: No surely, the Publishers of such Reflections are of another thought themselves; and some folks imagine, they who formerly were ingaged in Seditious Practices against the Crown, would now upon the present occasion explode that Law which doth condemn such Practices, that they may with impunity repeat them whensoever the King or his Ministers shal chance to disoblige them, and that this is the true reason of half the new Libels and Invectives upon past Proceedings.

It

It is now apparent to all Mankind, that every Line, or at leaſt Page, of ſome Mens Works are deſigned only as a Courtſhip to the Mobb, by bridling the Sovereignty, and clipping the Prerogative, even to ſuch a degree, as doth abſolutely deprive it of thoſe Rights, Powers, and Authorities, which the ancient Law, continued uſage, and our preſent Repreſentatives conſent to allow it.

To check this growing itch of Pamphleting the Nation into another Change, and to vindicate the Rights of the Crown, and juſtifie the Magiſtracy of *England* from the obloquy which was induſtriouſly thrown on it in one Particular: there was three Months ſince, a Sheet Printed and Publiſhed, at which ſome Men took offence, but others were of Opinion, that its Publication was ſeaſonable and well timed; that its reflection on the trifling defence which it aſſumed to anſwer, were juſt and ſmooth, and very ſoft, conſidering the occaſion given for a more Satyrical Style from the fondneſs and incoherence of the Defenders expreſſions and inferences, and that the mode of managing his Argument, was modeſt and tender, with a decent and due regard to the memory of the unfortunate deceaſed, which had ſuffered more than enough of Injury by that pretended Juſtification.

A Cholerick and Sedulous Enquiry hath been made after the Author's Name, but the inquiſitor is ſtill at a loſs, notwithſtanding his confidence of a certain knowledge who it was that came behind and ſtruck him, *&c.* But to give him ſome ſatisfaction, after all his fatigue in ſearching, I will aſcertain who it was not; he may aſſure himſelf that none concerned in that Trial, were concerned or privy to its Vindication, and when it was Compoſed and Writ, the Party intended it chiefly for his own and the World's diverſion, from the ungratefull neceſſity of Reading always on one ſide, by the interpoſal of a few Lines on the other; that our Humours might not be quite ſowred, and our Genius turn too peeviſh through the influence of Satyr and Libel, with which the World hath too much abounded of late years; nor had there been one word more publiſhed upon that Subject, but that the Authority of the Defender doth challenge a Vindication, and the word of a Prieſt ſays that it needs one; both ſhall have an anſwer preſently.

But firſt it is remarkable, that this new Reply hath got a Licenſe, when none of his other elaborate Works could procure one; however, it is poſſible that the Licenſer may hereafter renounce, or retract his Allowance in this caſe, as he hath done in ſeveral others already, when his Superiours are acquainted with the Contents and Tendencies of that to which he hath given his *Imprimatur*; for it is not to be ſuppoſed, that Miniſters of State will ever be ſo incurious of their Maſter's Honour, and the Rights of his Crown, as to approve their diminution, when once they perceive it.

The ſingle Point which the Advocate for Magiſtracy aſſumed to maintain, was that the Indictment in queſtion was Legal and Good, ſufficient both for matter and form, and did warrant the Judgment which was pronounced upon the Verdict that affirmed its truth; this ſeems the principal Aſſertion in that Paper, which whether his Precedents and Authorities, Arguments and Reaſons, are ſufficient to prove, the Reader muſt judge; that the Caſes he cites are truly reported for ſo much as he uſes them, none can deny, and that the Law is with them upon the whole matter, ſhall be farther evinced.

But ſince that Sheet hath made ſome noiſe amongſt angry Men, (which was little expected by him that wrote it,) it will not, I hope, be thought impertinent to ſpend a few.

a few Paragraphs upon the boiſterous and bluſtering Invectives and Remarks made againſt its Author in a pretended Reply. In his Vindication therefore I ſhall obſerve, the Temper, the Wit, the Gueſs, the Reaſon, the Religion, and laſtly, the Law of that Replication.

As to the Temper, it ſeems to be writ under ſome diſappointment, for the Author doth in every Sentence declare his Paſſion, and plainly tells us that he was then diſcompoſed; but whether his diſpleaſure were conceived at a paſt or preſent Chief, is not ſo eaſie to determine: To expoſe his fury, it is enough to repeat his Epithets of Daring, Bold, Impudent, Preſumptuous, Baſe, Ingenerous, Inſolent, *&c.* and all this deſpiſed by his reputed Author, and ſmiled at by the real one. He is pleaſed to call the Sentence and Execution a plain Murther, which if ſo, ſure I am that he is bound in Conſcience to Proſecute an Indictment againſt the Judges, the Recorder, the Grand and the Petit Jury, the Witneſſes, the Clerks, the Sollicitors, the Gaoler, the Sheriffs, and the Executioner, for they were all concerned either as Acceſſories, or Principals, and demerit a Halter if the Repliant's Opinion be Law; but it is obſerved amongſt *Honeſt Men*, that none of theſe Parties ſhew any fear on't; and the reaſon they give for it is, becauſe the Indictment was as good as their Juriſdiction, and the concurrence of thoſe two makes them as ſafe as an Act of Indempnity can do: but all this was Paſſion.

As to the Wit on't, moſt of his Readers are at a loſs where to find it, unleſs it be in his *Engliſh* Verſes, which do ſo hit the ſenſe of the Original, and contain ſuch ſtrong and pregnant flights of *Engliſh* Poetry, that ſome of his Readers have compared them even with *Sternhold* and *Hopkins*; and others are of Opinion that they do not come ſhort of the Eſſays of the two *Grays-Inn* Poets, one of which Tranſlated *Grotius, de Veritate Chriſtianæ Religionis*, and the other *Coke* upon *Littleton* into Rhime, but the generality do declare that for Heighth of Fancy, Propriety of *Engliſh*, and Exactneſs of Rhime, he hath much out-done all thoſe: but for my part I believe that laſt Rhapſody was added not ſo much for the Ingeny ſake, as to menace the Anſwerer with a deſign to Sacrifice him whenſoever an occaſion ſhould offer it ſelf, and conſequently to doe what the whole Book complains of; but that Advocate is not ſo much a Coward as to be affraid on't.

As for the Gueſs, it is very cunning, and argues more Figure Knowledge than true Judgment in Styles, Modes, Dialects, or Peculiarities of Speech, or Writing, for he will have the Author of that Sheet, to be the Author of the *Antidote*, though he never ſaw it till he had the misfortune to have read the *Defence*; and his particular Idioms are as different from thoſe of the *Antidote*, as they are from thoſe of the *Defence*; but this is all gueſs. He will have it one of the Council of that Trial, becauſe he hath put *Council* before *Court*: a Cunning Man would have gueſs'd the contrary, as ſuppoſing it done *fallendi gratia*, for the ſake of diſguiſe; but he may be aſſured it was mere accident that occaſioned that fault. He will have it to be the then Sollicitor, becauſe of his Reputation, which is ſuppoſed to be touched in that *Defence*: but his Readers think that that Gentleman's Figure for Learning, Honour, and Vertue is ſo far above the reach of a little Pamphlet, that all the virulent Reproaches of the *Reply* cannot Sully it, nor is it in the power of any Tongue or Pen to prejudice his Character in the World; but however it is prudent to ſuppoſe to my ſelf an eminent Adverſary, that if a Foil be my fortune, it may be the eaſier.

But

But ſince we are gueſſing, the World gueſſes that he who wrote the *Reply*, did write the half Sheet called the *Juſtification*; and it is really ſportive to read the *Juſtifier*, commending the *Denfender* for a learned worthy Perſon; and the *Repliant* doing the ſame good Office for the *Juſtifier*, and almoſt in the ſame words commending him: nay, he ſpends a whole Page in the fulſome Praiſes upon that *Small Bulk* Authour, and rejoices that the Work was done to his Hands, which is a very pretty jeſt. It is at moſt but *R.* for *A.* and *A.* for *R.* and *R. A.* ſtill, which is much better than the contrary practice, of which ſome Authours have been guilty.

As to the Reaſoning part, the Reader muſt excuſe my brevity, for in truth there is very little in it of that nature; however a few remarks may quicken and revive that faculty againſt the next turn. The Advocate owns it to be writ in anſwer to his Defence, *ergo* it reflects upon the Nation's Wiſdom. He expreſſes a Reſentment at my Lord *Ruſſel*'s engaging in ſuch a weak and criminal Enterpriſe, *ergo* he reflects upon the Nation's Juſtice. He names the Lord *Ruſſel*, (though with the moſt tender Appellations that could be uſed,) *ergo* he reflects on that Lord's memory. He vindicates the Indictment as good, *ergo* he juſtifies all the Proceedings in that Caſe. He argues that the Sentence was legal upon ſuch a Verdict, *ergo* he is againſt the Reverſal. He puts a Caſe, offers a Point, and makes a Proof on't, *ergo* he is tranſcendently impudent. Theſe, and ſuch like, are the inferences, and do demerit a Laugh.

As to Religion, I ſee none in it, unleſs it be in the mention of the Deviliſh Powder Plot, which is ſtill as much to the purpoſe of his *Reply*, as the ſtory of Tranſmigration of Souls was to that of his *Defence*; only Meekneſs is tranſparent in his Style, Humility in the Title Page, and true Chriſtian Charity in his Menaces of an exception out of the Act of Indempnity, which he repeats three or four times at leaſt, as if his whole intereſt were deſigned to promote it. The Gentleman's Danger is from publick and ſcandalous Actings in the Eye of the World; which were (ſays he) labouring to *Support the Government*, every Man knows what ſort; laſhing the innocent with a *bitter* and *ſharp Tongue*, and *inveigling* of *Juries* with Rhetorical flouriſhes. Now to examin a little theſe three monſtrous Tranſgreſſions, let us go backwards. As to the laſt, a Duty can never be a Crime; every Servant owes Truth to his Maſter, while ſuch: every Advocate is to doe his utmoſt, and a failure in it had deſerved both the worſt of Names, and Puniſhment, which the *Repliant* could invent, or his intereſt procure. For all Mankind muſt agree, that the now Servants of the preſent Crown are obliged to doe the like upon the like occaſion; if otherwiſe, the *Jacobites* Side will be the ſafeſt. I will not reflect on the weakneſs of the Juries that were thus inveigled, if any ſuch there were, but rather ſuppoſe that the Oaths of Witneſſes, not the Pleading of Council, did govern their Conſciences. As to the ſecond, that is falſe, and needs no other anſwer. As to the firſt, the Gentleman's Honour and Merit afterwards, is as remarkable as his Fault at firſt, if it were any; but however he is likely to have abundance of Company, in Deſert at leaſt, if not in Cenſure: for a Duke of *York*'s Creature is certainly as culpable as a King *James*'s Servant. And *Andrew Marvel*'s Characters in his growth of Popery, will be as true a Directory to decypher Criminals as the four Volumes of noted Tryalls. And perhaps if the Or-

dinance of *May* 10. 1650. ſhould chance to be revived, danger and fear may ſeize other Men, as well as thoſe that ſerved paſt Governments; it is therefore thought adviſable for all to ſit down quiet, and forgive and forget what is paſt, but ſerve God and their Majeſties for the future, and not belabour the excepting one another; for if any ſhould be ſuch Fools, the Knaves will get the better of it, and the righteous ſcarcely be ſaved. So much for Religion.

Now for the Law if we can find it: But becauſe the *Defender* ſeems ſomewhat diſpleaſed at the repetition of that unhappy Lords name, whoſe Caſe gives occaſion for the preſent queſtion. Let us therefore put it like Mooters, *John a Styles* was indicted, for that he, at ſuch a time and place, did compaſs to deprive his Natural Lord the King, that then was, of his Regal State, and to deſtroy his Life, and to ſubvert the Government, and raiſe a Rebellion, and to fulfill that imagination, he, together with others, did then and there conſult and agree to raiſe a Rebellion againſt the ſaid King, and to ſeize and deſtroy the Guards of the ſaid King's Perſon, contrary to, &c. The queſtion was not whether *J. S.* was Guilty? nor, If the Witneſſes ſwore falſe? Whether his Attainder were fit to be reverſed? But the diſpute was, Whether that Indictment were legal? Whether ſuppoſing *J. S.* to be found Guilty, the Court that pronounced the Sentence of Treaſon againſt him, ought to have arreſted ſuch Judgment on the motion of *J. S.* that the Indictment was inſufficient? The Sheet argues that the Indictment was good, and conſequently the Sentence purſuant thereto was warrantable by the Laws of this Land. The Argument ſeems founded both upon the Reaſon of Things, and the Authority of Precedents.

Firſt, The Reaſon alleadged was, that the laſt part, which in Lawyers terms is called an Overt-act, was a natural and genuine Senſe or Declaration, or Overt ſignification of the firſt part, which is an internal ſecret Thought, *i. e.* the Imagination and Compaſſing, which is the Treaſon prohibited and condemned. That the latter directly and conſequentially tending and conducing in the common Senſe and Reaſon of all Mankind, (excepting the *Denfender*, and two or three more,) to the accompliſhment of the former, makes a good and ſufficient charge within the Stat. *Ed.* 3. A Repetition is tedious, and an Abbridgment is ſcarcely poſſible, the whole Sheet being but a Breviate, I ſhall therefore refer you thereto.

Secondly, The Authorities there urged, are either the Opinions of Judges and other Lawyers, or Precedents of Indictments of the like, or the ſame nature, from which the Legality of this may be juſtly concluded: The ſubſtance of them on the whole matter is, that Overt Acts to depoſe the King, or deſpoil him of his Regal Office, or take him by Force or ſtrong Hand, or to impriſon his Perſon till he yields to the demands of thoſe who practiſe ſuch endeavours, are ſufficient Overt Acts to prove the Compaſſing and Imagination of his Death. That levying War, cauſing an Inſurrection, promoting an Invaſion; nay, that Conſults, Conſpiracies, Practices, Advices, Letters, Perſuaſions, and other Motives, and Preparations to an Inſurrection, or Invaſion, though none ſucceed, have been held Overt Acts of Imagining the King's Death. I will not repeat the Caſes, but as occaſion offers from the other ſide.

The

The Objections there mentioned and answered from the Penning of the Statute, are too trivial to deserve a remembrance, nor would they have ever been thought otherwise, but that *J. S.* was a Noble Person, and the *Defender* a great Man, and the Preface thought so too, either by himself or others. These and such like ingredients have made some semblance of difficulty: and in truth, had there been a real doubt in the Case, the Authour of the *Remarks* on that Tryall, who wanted neither Sense nor Will to censure it, had his Opinion so inclined, I say, he would certainly have fallen foul on it in those invidious Observations of his upon the late Times. He quarrels with the Legality of the Jurors, the *Defender* with that of the Indictment, and both with the evidence. The Authour of the Sheet differs from them in the two first, but aggrees with them in the last, that Testimony delivered for fear of Life, or hopes of Pardon or other Reward, is hardly creditable; but that is not the Point. Let us see if the *Replication* doth overthrow the Charge as insufficient; and for my part I cannot find a Line of Argument in it, but only it is naught, because it is naught. The consulting and concluding to make an Insurrection and Rebellion, and seize the King's Guards, is not a Declaration of the Party's compassing the King's Deposal or Death, and why? Because conspiring to levy War is not a levying War, and levying War is a distinct Treason; this is the substance of the tenth Page, if I can read: The Sheet said truly, That levying War it self might be alledged as an Overt Act of Compassing, and hath been so frequently, and meeting and agreeing to rebell and seize the Guards, hath a direct tendency to promote a Demise of the King either natural or civil, and therefore might as well be alledged an Overt Act as most things whatsoever.

I had almost forgot one Clause, and that is the unnecessarines of making 13 *Car.* 2. if it should be as the Advocate argues; I suppose he means the first Paragraph, for the second is agreed to be introductive of a new Law, *&c.* but the first is only a Paraphrase upon the 25 *Ed.* 3. It is thus, That if any Person or Persons whatsoever, shall within the Realm or without, compass, imagin, invent, devise, or intend death or destruction, or any bodily harm tending to death or destruction, maim or wounding, imprisonment, or restraint of the person of our Sovereign Lord the King, or to deprive or depose him from the style, honour, or Kingly name of the imperial Crown of this Realm, or of any other his Majesty's Dominions or Countries, or to levy war against his Majesty within this Realm or without, or to move or stir any Forreigner or Strangers with force to invade this Realm, or any other his Majesty's Dominions and Countries being under his obeysance, and such compassings, imaginations, inventions, devices, or intentions, or any of them shall express, utter, or declare, by any printing, writing, preaching, or malicious advised speaking, being legally convicted thereof, by the Oaths of two lawfull and credible Witnesses upon Tryall, or otherwise convicted or attainted by due course of Law; then every such, &c. shall, &c. Now what is this but a confirmation of the old Statute in words at length; which was agreed to be so in the House of Commons, 1 *Jac.* 2. when a motion was made to renew that Law, the Lawyers Answer was, that the 25 *Ed.* 3. did the same thing, and a Man may boldly say it, that here's nothing declar'd Treason, but what had been adjudg'd so before, and Attainders and Executions had pursuant to it: The Sheet

mentions Caſes enough, and to the purpoſe, though ſome think otherwiſe; but I'll not repeat them.

In the 11th Page the Reader is referr'd to the juſtification in the half Sheet; and therefore let's examine that a little: a third part of it is ſpent upon the Evidence, but that is not within my Province, which is only to vindicate the Vindication: As to the reſt, the force of it, if any, ſeems only to be founded on his firſt Aſſertion, the conſpiring to doe a thing is not the doing a thing, and he quotes two great Mens Names for it, I would have agreed that, though he had ſpar'd the Authority to juſtifie it; but this is ſufficiently anſwered in the Sheet: He offers an Argument from the late Statutes declaring Treaſons, becauſe they were temporary, but I anſwer as the Sheet doth, they were in affirmance of the old Law, and I can ſhew him three or four temporary, and an hundred other Acts of Parliament that are ſo, and therefore that is no argument at all; but I am, as the Party I juſtifie was, confin'd to a Sheet, and therefore cannot enlarge.

He lays down a Rule for conſtruction of Statutes, that a thing particulariz'd in one part is not to be conſtrued within the general words of another part, but that Rule hath near fourſcore Exceptions in the Books; beſides it comes not to this Caſe, for here's compaſſing the King's Death made Treaſon, and declar'd by Overt Act; then levying War is made Treaſon: Now ſays the Repliant, nothing can be an Overt Act of and conduce to promote and accompliſh the firſt, that doth any ways concern the latter, I ſay it is a *non ſequitur*; for there are ſeveral inſtances mentioned in the Sheet, which reſpect the levying War, and yet are a genuine evidence of the intention and compaſſing; and if ſo, the Judges who have ruled ſuch Indictments to be good, did neither aſſume an arbitrary Power, nor tranſgreſs any Rule of Law, as the half Sheet inſinuates.

Then the Lord *Cobham*'s Caſe is endeavoured to be anſwered, by a Wonder that Sir *Edward Coke*, late Lord Chief Juſtice, and then Sheriff, ſhould differ from Mr. Attorney *Cook*; for we know his thoughts in Sir *Walter Rawleigh*'s time, and his Speeches in *Car.* I. his time; they are as different each from other as the times were, and in this particular that Gentleman hath had more followers than Precedents; but the Query is, What is Law?

Then Sir *Henry Vane*'s Caſe is endeavoured to be anſwered by this, that *Syderfin* mentions not the Overt Act in the Indictment, but he doth ſay the Treaſon alledged was a compaſſing the King's Death, and every Man knows what Sir *Henry Vane* did to accompliſh that: he neither ſign'd the Warrant to execute that Murther, nor was he actually concerned in it; the Juſtifier ſays he does not remember it printed any where but in *Syderfin*'s Reports; for the refreſhment of his Memory, I'll tell him of another Book where it is, and that's *Keble*'s Firſt Volume of Reports, 304. and there the Indictment is ſaid to be for Compaſſing the King's Death, and endeavouring to accompliſh the Treaſon, by changing and Uſurping the Government, and levying War, which Caſe doth directly overthrow all the Defender's, Juſtifier's, and Repliant's Arguments from the diſtinctneſs or difference of the ſort of Treaſon.

Then for Dr. *Story*'s Caſe, he ſays 'tis hard to juſtifie it for Law; whereas there are above forty places in our printed Laws Books, where 'tis cited and a-

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greed to be Law: Now 'tis pretty odd, that a Caſe ſo reſolved and ſo ratified, ſhould one Hundred and eighteen Years after, be arraigned in Print, for 'twas *Hill.* 13. *Eliz.* if any thing be Law, that is ſo, and not diſtinguiſhable from this Caſe in queſtion, but that the Evidence was different, which the Juſtifier would make a reaſon to invalidate this Indictment; the Logick of it paſſeth all underſtanding: beſides, 'tis obſervable, that the Benches were fill'd both with Learning and Integrity in 1571, and 1662, neither of thoſe times were Tory or Popiſh; and in *Dyer*, 298. the reaſon given was, That it could not tend but to the great peril of the King's Perſon, and therefore an attempt to promote ſuch Invaſion, though none followed, was adjudg'd as aforeſaid. In 2. *Anderſon pl.* 2. *fo.* 5. *Grant*'s Caſe, 'twas held, That when any Perſon intendeth or contriveth to levy War for a thing which the Queen by her Law or Juſtice ought or may doe in Government as Queen, it's not material whether they intend any hurt to her Perſon; but if they intend to levy War againſt the Office and Authority of the Queen, that's enough, and that reſolution overthrows the Juſtifier's Notion, that *J. S.* his deſign was only to defend the Laws, though the 13 *Eliz.* alſo was then in force, it's a good Argument to anſwer that pretence.

Now I have repeated and obſerved all the Replication or Juſtification offers in anſwer to my Friend's Sheet, the Reader may perhaps expect ſome new Matter, not ſo much for confirmation, as to give occaſion for a farther defence. In Sir *Fr. Moor*'s *Rep. fol.* 621. *pl.* 849. on the Tryals of the Earls of *Eſſex* and *Southampton* before the then High Steward, the Juſtices did there reſolve, that when the Queen ſent to the Earl of *Eſſex* the Keeper of her Great Seal, and others, with a Command to him to diſperſe the Perſons armed which he had in his Houſe, and to come to her, and he did refuſe to doe ſo, and continued the Armour and Armed Perſons in his Houſe, that this was Treaſon; and they did alſo reſolve, that when he went with a Troop of Captains and others from his Houſe to the City of *London*, and there prayed Aid of the Citizens to aſſiſt him in defence of his Life, and to go with him to Court that he might get into the Queen's Preſence, that he might be ſufficiently powerfull to remove from her his Enemies who were then attendent, that this was High Treaſon, becauſe it tended to a force on the Queen, *&c.* I make no inference, let the Reader doe that; 'tis plain that an actual mental intention of hurt is not material in the one Caſe or other. As the Duke of *Norfolk's* Caſe is related by *Cambden* in his Hiſtory of Q. *Eliz.* 163. the Treaſon which the Duke confeſſed, was a Plot to ſeize upon the Tower of *London*, and deliver the Queen of Scots; and that's all.

There's nothing remains in doubt, but the legality or illegality of the King's keeping Guards for the preſervation of his Perſon; they ſay the Law takes Care of him, and therefore he is to take none of himſelf, and that the Judges are his Guards, and therefore he needs no other, that *Henry* VII. was the firſt other. But let us reaſon a little; can it be King that had any ſuppoſed, that he ſhould be ſo ſacred in his Perſon, ſo great in his Power, and of ſuch Authority as to make War or Peace abroad, and raiſe Forces and ſuppreſs them at home, as the Danger or Defence of his Realm ſhould require, and not be able to provide for his own Perſonal Safety *de preſenti?* Can he only puniſh by his Judges afterwards, or prohibite by Proclamation before, but not defend himſelf?

ſelf for the preſent? Is it ſenſe to ſuppoſe it? The Kings of *England* might have, and actually had Soldiers or Guards (call them what you will) even in times of Peace, and long before *Hen.* VII. as well as continually ſince; I may be ſo bold as to defie any Man to ſhew me the Year, the Month, the Week, or the Day, ſince the Conqueſt by *William* I. that *England* was without armed Men actually upon Duty in ſome part or other of the Nation. This Sheet is not intended for a ſtudied Argument on this Subject; and perhaps it would be difficult to juſtifie a ſtanding Army as warrantable, when there's no occaſion for it; but to ſay he can't by force, even by force, provide for his own perſonal Safety, when he apprehends it in danger, as every Engliſh King hath continual reaſon to doe, eſpecially if ſome Mens Doctrine prevail, it may be modeſtly affirmed unreaſonable: Hath not every Subject power to keep Arms as well as Servants in his Houſe for defence of his Perſon? Is not his Manſion called his Caſtle? And yet the Law protects him too by Prohibitions *à parte ante*, and Puniſhments *ex parte poſt*: There are many Tenures in *England* which oblige to the annual payment of certain Summs towards Soldiers Wages for Defence of the King and Kingdom; there are others oblige to the annual finding certain quantities of Grain in kind for the ſupplying the King's Caſtles and Garriſons, as well as Houſhold; which being annual, do demonſtrate the lawfulneſs of their continuance, even in times of Peace, and their being immemorial do conclude a Common Law right in the Kings of *England*, to have thoſe Occaſions, as they do conclude him a Right to have them ſupplied by ſuch like Services: Nay, Grand Serjeantry is either by Services of Attendence on the King's Perſon in time of Peace, or for Military Aids, in time of War. The Crown may raiſe Forces by Commiſſion, or of the Militia, to ſuppreſs Inſurrections, in Caſe the Civil Power of the Sheriff is not ſufficient or ineffectual. The Kings of *England* have the ſole Power and Force of the Nation; Complaints have been in Parliament againſt Billeting Soldiers contrary to the Will of the Hoſts, but never for maintaining a Guard for their own Perſon at their own Charge; Complaints have been of a ſtanding Army, but never of a ſelect Company for his perſonal preſervation; a Terror to the People may as well be pretended from his Coachmen, Footmen, or Grooms, if their Numbers be great: Beſides, for a competent Power in Arms he always may have occaſion, when his Subjects know nothing on't; 'tis his Province to foreſee and prevent as well as ſuppreſs and puniſh domeſtick Tumults, and the Buſineſs of War is ſeparately his Office, and that excluſive of his Subjects, any otherwiſe than as they are bound to obey and fight, or deſired to aſſiſt with Aids and Subſidies; and for this, to avoid a numerous Volume of Citations, I'll name one notable Roll or two *in Parliament. 6. Ric.* II. *Mem.* 9. the manner and way of the proſecution of a War being given in Charge to the Commons to adviſe upon, they anſwered, that this *nec doit nec ſolayt* appertain *al eux mes al Roy*, and ſo they did, 31 *Edward* III. *Parte. prim. n.* 11. *&* 21 *Edward* III. *n.* 5. It's true in 5 *Edward* II. *n.* 4. Ordinances were made, that the King without the aſſent of his Barons could not make War; but thoſe were repealed and dampned, 15 *Edw.* II. *Parl. Rot. M.* 13. becauſe prejudicial to the Royal Power of a King; and this is ſufficiently affirmed by the Act concerning the Militia in *Carol.* II. his time. It is well known in what time

Bryan

Bryan Chief Juſtice ſaid, that if all the Subjects of *England* ſhould war with the Subjects of another Kingdom, that this is no War, unleſs the King denounces it: It ſuffices for my Friend's Point, that the King may lawfully have armed Men or Guards, when himſelf judges his Perſon or People to be in danger, or ſtand in need of them: And that he may, when reaſons of State will not admit their publication to the World. But however ſome ſtanding Force the Crown ever had and ever will have, though not always to ſuch a Degree as ſhall be burdenſome or oppreſſive; and our old Law Books ſay that Arms as well as Laws are neceſſary for the Prince, not only in but againſt the times of neceſſity, I mean War or Tumult; beſides in *Bracton lib.* 3. *cap.* 3. *de Corona*, 'tis ſaid, that *Crimen leſæ Majeſtatis* is the greateſt Crime, becauſe of the greatneſs of the Perſon againſt whom 'tis committed; his deſcription of it is, *Præſumptio contra perſonam ipſius Regis*; then when he particularizes the ſeveral ſorts of Treaſon, the firſt which he names is, *Si quis auſu temerario machinatus ſit in* (*i. e.* towards) *mortem domini Regis, vel aliquid egerit vel agi procuraverit ad ſeditionem Domini Regis vel exercitus ſui, licet id quod in voluntate habuerit non perduxerit ad effectum.* I'll make no Inference, there needs no Paraphraſe, the words are plain; an Act tending to the deſtruction of the King's *Hoſt* is High Treaſon againſt his *Perſon*, *agere ad ſeditionem exercitus regis eſt præſumptio contra perſonam Regis, & præſumptio contra perſonam Regis eſt crimen leſæ Majeſtatis*: Now can *Bracton* be thought to ſpeak only of Treaſons in time of War? *Glanvil. lib.* 14. *c.* 1. *Crimen leſæ Majeſtatis dicitur de ſeditione Domini Regis, vel regni, vel exercitus*; and *Fleta. lib.* 1. *c.* 20. *De ſeductione exercitus ſui: & cap.* 21. the ſame words, *ſeductionem ejus vel exercitus ſui*; this was the ſenſe of the old Law, and is very appoſitely applicable to the Caſe in queſtion, as I could eaſily ſhew, would my Paper bear it. There is one thing which I had quite forgot, and that is, that the Inſtrument of Grievances which the Prudence of the preſent Parliament hath provided, complains of a *Standing Army*; the Anſwer is eaſie, 'tis not of *Perſonal Guards*, and the wiſe enquiry of the Houſe of Commons into the *quantum* requiſite to maintain ſuch and ſuch Forces during the preſent occaſion, and of the Expences of the Crown in Houſhold, Courts, Guards, *&c.* afterwards do plainly ſhew, that that was not the intended Grievance: Now to ſumm up what is not anſwered at all or endeavoured to be ſo by the Defender, nothing is ſaid to the reaſon of the thing, or the neceſſity and nature of an Over-act, to the opinion of *Coke* in the places cited, to the Caſe of Sir *Walter Rawleigh*, the Caſe of the Cardinal, the Caſe of Mr. *Coleman*, the Caſe of *Conſtable*, the Caſe of *Owen*, the Caſe of *Burton*, the Caſes of *Sparhauke*, *Awater*, and *Heber*, the Indictment againſt Sir *William Aſhton*, *Germain* and *Taylor*, and *Thomas Burdett*, *Collingbourne*, and *Colledge*, nor to the Opinion of the Judges in the Lord *Stafford*'s Caſe, as if 'twere all impertinent, but the Reader is Judge if it be ſo.

Now for the Prefacer, I'll be as ſhort upon him as he was upon my Friend; he ſaid that the Sheet needed a vindication, and I have given it one, and if this needs another, I hope the Crown will find a Friend to write ſome Third. He ſeems ſo us'd to the word *Libel*, that he cannot forbear calling it an *infamous* one; he ſays it has not one true material word in it; I'll remember him of one,

that

that Mocking is catching in the Proverb, that is *A Grumbletonian in the Stirrup generally proves a Tyrant---in the Saddle*; that's enough for him to remember: If he wants any more truth, and that he may not say this hath none in't, Treasons are easier committed than distinguish'd, by some Men especially, and the reason why I say this, is because of his Octavo Preface when he is grumbling still, for I always thought that he had smarted too much for Libelling on Ministers of State and Male-Administrations, to venture again; but when a Priest meddles with Law, he is like an Apothecary at Politicks, he generally runs himself into a Noose, for he'll never leave off till he's advanced on: way or another. To conclude, the design of the Sheet was to justifie the Prerogative of the King and Queen, and the Rights of their Crown; and the Republican is angry that either should have any, and from thence flames the Passion; nay, rather than it should be allowed, they'll attempt another change, from which good Lord deliver us. *Pro.* 28. 2.

During the composure of the Premises, News was brought me that another Pen had been procured to attack the Vindication, *viz.* The Author that runs a-muck at all Mankind, except his own Patroons: A deserved and full remark upon so voluminous a Book, is not here to be expected, however, this Appendix may serve for an Advertisement to the World, that the new Repliant is in several particulars obliged to Solicitor *Coke*, and the other Regicides defence on their Tryals for much of his Materials; time is wanting to shew the Parallel; at present 'tis fit to be observed, that his blind side also is apparent, and consequently capable of a sufficient Answer, and to give my Reader a Specimen thereof, I'll take notice of a few (amongst many) Mistakes, both in Fact and Law, which he hath wilfully committed. In the first Page he says, That to justifie what hath been taken ill, accuses the present Government of Injustice; which is false. In p. 2. he says, that the Vindication ventures on a point of Law which it pretends is the result of the Evidence given; there's no such pretence in the whole Paper, the only debate was upon the Indictment. He says in the same Paper, that it's said his Relations were pleased with the justness of the Tryal; it only says, his Relations were pleased, and his Enemies angry with those who then sate upon the Bench, and that's true; for some of his Relations cannot deny it, the Fact is so well known. The last line of P. 3. and first of the next are also false, for 'twas neither written, perus'd, nor approv'd by any of his pretended Criminals: I believe they thought the Point too clear to need a Vindication; but this is just like his wonted positiveness in his Remarks; where for instance he says, that one of the Judgments he cavils at was the first that was ever given without Argument or Reasons delivered in Court, which is also false; for in *Plowden*'s Comment. 459. In Sir *T. Wroth*'s Case, the Author takes expres notice, that the reasons of the Judgment were not disclosed when the same was pronounced; and Fifty other Cases I could name him of the same, but one Instance is enough to falsifie a general indefinite Position, though there are several more even in that very Book.

But to run over his Volume, Pag. 2. is only a farther scurrilous Reflection to vindicate his own Remarks, and an impertinent bombast of words on the Phrase of *English* proceedings: The 3 P. assigns four Reasons of Printing, the two last are applicable to himself only, and he thinks so of the fourth, or else his Story is foo-

lish

liſh like.—In the 4 P. he boulſters up himſelf in his Railery, by reſorting to his refuge of the Parliaments Authority that reverſed the Judgment, which all Men agree to be juſt, but it was not becauſe the Recorder did not arreſt the Judgment on that trivial Exception to the Indictment, but becauſe the Proſecution was ſuppoſed malicious, and the Evidence ſuppoſed falſe or deficient, or both.

The 5, 6, 8, 9, and 10*th.* Pages are all impertinent to the Point in queſtion, and contain nothing but a Vindication of his juſtly condemned Clamour in his former Book; concerning which, I'll boldly ſay it, in ſeventeen Points of twenty he is out in his Law; if 'twere convenient to publiſh the proof on't, I could make it plain. His deſign is to ſhew in thoſe Pages his Wit and Fancy, more than Candor or Law; for my part, I am of his Friends mind that he comes not ſhort of the old Obſervator for mannaging a Dialogue: But all this is not to the purpoſe, he is not come at it yet, the 12 Pag. favours of the ſame Kidney, and 13. and 14. are no better: there he vents his Gall, and that in Ribaldry; no ſofter a name than Tools can be afforded to Men of Worth and Honor: If himſelf be one, as ſome ſuppoſe him, I am ſure it is not to the preſent Government, for he plainly condemns it, and declares the People, *i. e.* his ſort of them, unſatisfied with it, for its ſparingneſs in vengeance; and it is becauſe others are not puniſhed for maintaining the Law, and themſelves not preferred for Arraigning it: ſome Men know my meaning. He ſays he is only for mumbling of Judges and Counſel, *Cauſa patet.*

But I muſt tell him two things, 1. The Incinations of *Engliſhmen*, and the Laws of the Land, will never quadrate with a Common-wealth.

2. His ſuppoſed Criminals do not depend on their Number, but the Law, which ought, and will juſtifie them; if it doth not pleaſe, let it be changed by Parliament, or if the Author thinks that a tedious way, let us burn all our Law Books at once, and then perhaps his *Remarks* and *Reply* will be thought to be Reaſon, and himſelf the greateſt and only Lawyer in the Realm; but till then, he muſt give others leave to know, and to ſay that they know, he is miſtaken: For Reſolutions, and Opinions, purſuant and agreeable to the Opinions and Rules of former Ages, I mean, frequent and repeated Precedents, approved by the Lawyers of the Age that uſed them. I ſay theſe will be Law to the end of the World, unleſs altered by new Statutes.

And now we are come to debate the Queſtion, all that is paſt is upon the Times, and not the Point. In p. 18, is his Reaſoning part, which is no more than was ſaid before in, *&c.* To redargue him I muſt repeat; if therefore he will obſerve what is ſaid by the Sheet p. 22. I will ſay no more on't, but ſubmit to the Judgment of the Reader; he ſays the inferences are Ridiculous, I ſay they are Rational and Genuine: The ſingle Iſſue is, if his, or my Friends Arguments are the moſt Logical and Natural, let the Reader judge.

Now for Authorty, let us ſee if he urges any on his ſide, or anſwers that on the other. He admires (p. 24.) at the aſſurance of the Sheet Author, and others admire at his. He ſays the Parliament had often adjudged it, but none can ſhew any Judgment in the Houſe of Lords, or Vote of the Common Houſe to that purpoſe. I have ſhewn the Senſe of the preſent Parliament in the Point of Guards, and his temporary Laws are already anſwered; nor would any Man but he, and one more,

pretend that they are Judgments in the Case. Surely it will not be pretended that his Case of the Earl of *Northumberland* in *Hen.* 4. time, is any thing to the purpose: Nor is it any Argument to say, no King of *England* was ever killed for want of Guards.

Now for Cases p. 26. He saith that in the Earl of *Essex*'s Case there was an actual War Levyed, and that, as I said before, destroys the Argument from the different sorts of Treason. As to Cardinal *Pool*'s Case, he only says there was another Statute in force then, but no Record or History says that he was indicted on any other than the 25. *Edw.* 3. As to Dr. *Story*'s Case, he tells a long Tale out of *Camden* about the Fact, but answers not one word to the Indictment, whatsoever the Evidence was, the Indictment was as the Sheet alledges, and that is enough.

His answer to *Coleman*'s Case is that, that things hapning afterwards proved more, but the Evidence was no more than what my Friend alledges. As to Sir *Henry Vane*'s Case, his answer is, his own hear-say of what was proved, but the Judgment he never perused, *argued like a Lawyer.* As to *Constable*'s Case and the rest, he gives no answer, but only that a repetition of a number of Cases makes a mutter and a noise, and so it does when they Govern and Rule the matter in question, and are not answered. *Owen*'s Case, he says, the Author presses it strangely and that is all. He says the Cases of *Burton*, Duke of *Norfolk*, *Awater*, *Heber*, and *Crohagn*, are not to the purpose, let the Reader judg if they are not pertinent: As to the Opinion of the Judges in the Lord *Stafford*'s Case, he doth not mention it, but says the reviving that Case might have been spared, and that is all, a pretty answer: As to *Colledg*'s Case, he talks of a proof of a self Defence, but nothing to the Point it was urged for. As to the Cases of Lord *Cobham*, *Gray*, and *Rawleigh*, in 32, 33, 34, 35. pag. Setting aside his scandalous Invectives and Reflections upon those Times, Ministers, and Governments, he no ways attempts to answer the Argument drawn from them, *viz.* that the Charge was the same as in the Case in Dispute.

Now I appeal to any Man of Sense and Reason that will Read and Think closely, if the *Repliant* hath offered any one Argument more than the Lord *Russel*'s Case, Defence and Justification had alledged. If he hath shewn any one Judgment where such Indictment was resolved naught; if he hath given any answer to Dr. *Story*'s, *Collingborn*'s, Sir *William Ashton*'s, *Burdet*'s, and Sir *H. Vane*'s Indictment; in short, if he hath answered any two of the Cases cited: or if he hath done any thing but reflect on past and late times, and if the Indictment remain not good, both for matter and form, notwithstanding all these pretended Replies. Upon the whole matter, I desire the Reader to peruse the Book cited, and to judg if there be not presidents enough unanswered to justifie the Indictment in question, and that the Recorder gave a good Judgment upon the Verdict that affirmed its truth; *quod fuit Probandum.*

To conclude, Since the *Repliant* is in love with *Horace*, I would advise him to consider one hint of his

——*Forum, putealque Libonis*
Mandabo siccis.—— Hor.

The

The third and laſt part of the Magiſtracy and Government of England *vindicated with Reaſons for a General Act of Indemnity, &c.*

IT hath been the obſerved misfortune of moſt mix'd Governments, particularly of our own, never long to enjoy the entire Friendſhip of all its individual Subjects; the lowermoſt Side hath too frequently acquired the greateſt ſhare of the Peoples Love, or at leaſt Pity: It's then no point of Wonder, that the Servants of former Crowns ſhould incur their proportion of Envy, Hatred, and Reproach; and amongſt all thoſe none more obnoxious to it, than the Miniſters, Officers, and Inſtruments of Juſtice; for ſuch are the vitiated Sentiments of Perſons intereſted in all Suits, that the Vanquiſh'd is certainly injured, or thought, or ſaid to be ſo, which is all one, by the Perſons themſelves, their Friends or Relatives, their Patrons or Creatures. In truth there's ſcarce a Tryal on the Plea or Crown-Side, but one party, and ſometies both, do leave the Court with a ſwinging Curſe or two on Judge, Council, Jury, Witneſſes, and perhaps all concerned; upon which account, it can never be deemed a juſtifiable, much leſs a commendable and meritorious Imployment, for Lawyers to note and report, and afterwards publiſh to the World the Clamors of ſuch Malecontents, with the addition of Sarcaſm inſtead of Argument, and bluſhleſs Lies inſtead of Law and Precedents, and all this under the pretence of ſerving their Majeſties and the Government, but 'tis a mere pretence; for firſt, it's not their Province; theſe Publications are made by them, not as Legiſlators or Judges, but as private Perſons; and one of their Libels ſeems calculated only for private Lucre, as either the hopes of a Place, or increaſe of Practice, by telling the Town in the firſt and laſt Pages where the Author lives, of what Profeſſion, and how long ſtanding; an Art learn'd from ſome of thoſe exquiſite Doctors inhabiting towards the Fields, whoſe Knowledge and Converſation is pretended to be in Heaven: Another writes for Bread, and ſcribbles that he may eat, *&c.* A third, or rather the firſt and prime, is inſpired with Venom and Revenge, even the pure Spirit on't, as one baulk'd he is angry at all, and becauſe ſome were not his true Friends, he's reſolved to make Enemies of thoſe who deſpiſe him, and of them the number is great. But ſecondly,

It's of no uſe to the preſent Government, for Truth only can be a ſure *Baſis* of Reſpect to that; and in caſe of Slander, the Filth rebounds, and the Dirt thrown moſt ſurely turns on, and dawbs their own Faces, eſpecially when they arraign thoſe as ignorant, whoſe Learning, Knowledge, and Judgment, are ſo clear and acknowleged, as to render the Cenſors unworthy even of being their Bag-bearers; the like when they cenſure thoſe as corrupt, who have always boldly done their Duty, even in defiance of a Court Cabal, or a Popular Faction: who have always adhered to the old *Engliſh* Law and their juſt Opinions in it, though Frowns from *White-hall*, or Clamors from *Wapping*, though Lampoons from *Grub-ſtreet*, or a worſe uſage from an *Obſervator*, though a *Superſedeas*, or a *Take him*, &c. were the only reward they could expect for ſuch their (formerly called Puritanical now Arbitrary) Juſtice: Gentlemen who never polluted the Law (which the great and good Sir *Mat. Hale* did truly call a robbing the Poor of Juſtice) for the ac-

quiring a Farm or an Office, or a lumping Summ for Sale of it; who never begg'd an Executorſhip for to gain a Fortune; Gentlemen who never gave ſtrained Opinions concerning the Revenue when made for their Clients the Farmers, but clamored at the ſame when uſed by their King with more Moderation; Gentlemen who parted with their Places, though of Honor and Profit, rather than comply with a Court-Opinion or a Club-Notion, when others (I name no body) offered entire and everlaſting Service, if they could have preceded or ſucceeded them, (Teſte.... *apud St. James's* and the City of *Gloceſter*,) but miſſing their aim then, as now they do, their Gall muſt have a Vent, and ſo it hath with a Vengeance, when a true and bold Juſtice is made the Subject on't: The Reaſon is plain, theſe Men's Repute is too great for Truth, Probity, and uſefulneſs: An Eclipſe is neceſſary if poſſible, for if otherwiſe, the Defender will never be Keeper, the Remarker Solicitor, nor the *Gray's-Inn* Poet wear Scarlet in *Wales*; their hopes are but ſmall, unleſs they can poſtpone all their Betters by Death, Commitments, or that which is but little worſe, Reproach and Slander; but ſome think their Sting grows weak, for 'tis apparent that there are a ſort of Men, who though they might and did love his Majeſty when as Prince, yet do not, will not, cannot love him, or any Man elſe, as King; and this is now pretty plain. But Thirdly,

Their Libels are criminal, and injurious to common Juſtice, for they create a Diſreſpect and Contempt upon all Judiciary Proceedings; to arraign all paſt is to excite a Suſpicion of all preſent and future Adminiſtrations; whereas *Plowden* ſaith, fol. 38. *It's a good and ſure way to believe the laſt Judgment*; and if ſo, 'tis plain what Name the contrary Practice deſerves; beſides, were it otherwiſe, the Inſtitution of Judges and Courts were vain, and our State, as *Engliſhmen*, the moſt unfortunate; for we have no Rule but *ex ore Judicum*, or from particular Statutes, and of them they are the Expoſitors. Now let's inquire which is Law, the Defender's Fancy in his Argument *inter S.* and *B.* or the Judgment in the Exchequer Chamber, affirmed by the Lords? If the Judicial Reſolution be ſo, then the Publication of his Argument was ſcandalous, and I am not to follow him as my Guide; but perhaps he'll tell me, That manifeſt Reaſon and good Lawyers ought to govern me; if ſo, then I ask him, Who ſhall I follow in the E. of *D*'s Caſe of a *Capias pro fine puis Judgment*, &c. whether the eleven beſt Lawyers, or the Vote of the Houſe? If the latter, why not ſo in the former Caſe? And if otherwiſe, then his Judgment was miſtaken; ſo that *quacunque via data*, there's no Infallibity in this World, and conſequently no excuſe for private Cenſures of publick Proceedings in Courts of Juſtice: Beſides, the Books are pretty clear, that ſuch things are puniſhable; but I leave the Reader to peruſe them at leaſure. Now let us but conſider the Confuſion that muſt enſue upon the publick countenancing ſuch a Practice as theſe Scribblers have introduced; for if allowable on a disbanded Judge, 'tis ſo on a ſitting one, for the Caſe is the ſame in reſpect of private Lawyers who pretend to think their Judgments erroneous or corrupt; but ſurely both are unlawfull. Beſides all this, in the preſent Caſe

They have palpably wreſted the Law in divers Inſtances: I need name no more than the Indictment in queſtion, which that it was legal and good, moſt Men do now agree, eſpecially ſince the dint of the Oppoſal ſeems current only on the Evidence, with a Waiver of the other, the Indictment being good ſince that Guards

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are proved lawful, and the Observator concedes it the most legall part of the Procedure, and the Justice of Parliaments, *&c.* supposed written by the Defender, strains all it's Forces on the Evidence and the Times; and their Follower, the Post, in his new *Non-conformist*, pag. 10. runs the same way too: only

There remains one Objection to the first Vindication, which is, that it affirms, Words may be Treason within the 25 of *Edw.* 3. and the Remarker challenges a proof of it, and asks where it may be found; and the *Non-conformist* quarrels at the Lawyer that did assert it, and some others have done the same *ore tenus.*

I confess, that the first Sheet did publish the Assertion, but waved it's Eviction, for fear of a strained use of such Opinion to ill purposes, for the serving a turn upon particular Occasions; nor had there been any more said on it, but that their Confidence and Malice seems so exorbitant as to extort a Check, for the Regulator is grown so confident of his own Knowledg as to under-value the greatest of Judgments; whereas his Common-place Book affords us no Title but Collusion and Malice prepense; and his Practice hath been much of the same stamp, only that sometimes he hath added a little of the Lunatick as appears by his Rhimes, Prophecies, Dreams, Politicks, and other Religionary Works.

To prove the Assertion, I depend not on the Authority of the sense of the Commons House. 1 *Jac.* 2. though (let the Cryer for Justice, or who else pleases contradict it) it was in Fact then affirmed and agreed unto, and upon that, the then King's Council and Courtiers desisted the Motion and Prosecution of a Bill to make Words, *&c.* But that's a supernumerary Argument, there's more than enough besides.

I am not to maintain that all rank, malicious, gross Word's against the King or Queen's Person are such, nor that whosoever drinks an Health to our Sovereign Lord the People, or to the late King *James*, is a Traitor; but that Words significative and expressive of a present Intention to do an Act to the King's Destruction, such Words deliberately, maliciously, and advisedly spoken on purpose to accomplish the Demise of the King, as by promise of Money with importunity to commit the Fact, may be an *Overt-facit* to prove the Imagination within. 25. *Edw.* 3.

To evince this, let us think a little..... and 'twill be plain

The words of this Statute are clear and of an easie Construction, if we will allow those dull old Times to speak Sense: They are to this effect, That if it shall compass or imagine the Death, *&c.* and *de ceo provablement soit attaint per overt fait*: Now the Objection is this, That Words are not Deeds within that Clause; to this the Answer is very clear; for by all the Grammatical and other Rules for Interpretation of the Sense of Words, the latter part of a Sentence is to be construed (if used by way of opposition) as opposite to the thing mentioned and intended in the foregoing Part, and not as oppos'd to every thing which it may *ex vi termini* exclude in other Cases; and this is an agreed difference, both amongst Divines in Exposition of Sentences in Scripture, and Grammarians in allmost all Cases whatsoever: Now to apply this:

Overt facit is used not in opposition to Words, for there's no such thing mentioned; but 'tis added in contradistinction to that which was before specified, *viz.* Thoughts, and such are Imagination and Compassing; and therefore *overt facit* must mean any open manifest thing as can truly discover those Thoughts, as may prove-

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ably attaint the Traitor of such his Imagination; and it is a most natural and proper Mode of Speech, if they did intend, as most undoubtedly they did, that the Thought should be the thing prohibited, then 'tis as plain they intended by the Word *fait* any discovery of such Thought by Words or Actions; and so said *Newton* in 19. *Hen.* 6. That to imagine the Death of the King is Treason, though he doe no act towards it, if such Imagination be discloſed that it can be tried if he did so think and imagine. If that thoughts and Words are mentioned both in a Sentence, and afterwards Deeds in opposition, then the last will exclude both the former; but here when used only in contradistinction with Thoughts, it seems plainly otherwise. That Deed, when used in Opposition to Thought, doth include both Words and Acts, none can deny; a thousand Instances might be given of it; and in the exactest propriety of Speech, Words are Deeds when and as contradistinguisht from Thoughts; for the Soul thinks even as abstractly considered from the Body, but Man never speaks without Action and Motion: The difference is plain, and needs no Explication. But further,

I would fain know, What is a Consult or Plot, but the mutual and reciprocal Declaration of two or more Traitors Minds each to the other? Each declares his Traiterous Imagination by Words, and so of an Agreement to commit the actual Murther, 'tis but a Declaration of their Minds by Words each to the other, only they do happen to agree. Now suppose one Man thinks and intends to destroy the King, and by Words doth willingly, deliberately, and advisedly declare this to another that is not of his Mind, though by mistake is thought to be such; is not this the same thing? If a Man traiterously offers and promises to another a thousand Pounds to perpetrate the villanous Act; if he accept it, and a parole Agreement is made between them accordingly, surely the Apologists for Treason will agree that to be an overt Thing, and both guilty, if it can be proved by two Witnesses of credit. Suppose then the Party offered and promised doth abhor and refuse, will that make a distinction? If it does, 'tis without a difference: Perhaps the Word Consult will be called a new Cant; we know whose Coin it is, and who gave it the first stamp; 'twas no less a Man than Sir *Will. Jones*, who at the time of such his Invention was no Perogative Lawyer, though considerably so in Times then lately past: Nor is it imaginable what is the meaning of a Conspiracy or Plot to take away the King's Life, but a Communication by Words between several Traitors concerning such Act, and the method of it's Accomplishment, and a Declaration by Words of each Man's being fixed in that purpose; which if it be proved by sufficient Testimony, will undoubtedly be an Evidence of a Compassing, *&c.* which is the Treason Prohibited and Punishable; nor can the Meeting make it more so, for they could not discourse unless they met; and therefore 'tis the Words only that are the manifest *overt fait*. Nor doth *Hugh Pynes*'s Case, or the Resolution of the Judges therein, contradict this, notwithstanding the Confidence of the Remarker that it did; they only say that the Words in that Case were not Treason, that those Words were not an Evidence of Compassing, that for those Words he could not be Indicted upon that Statute; but their Opinion doth plainly imply, That had the Words been Evidence of a Compassing, *&c.* as they were only slanderous and reflective, it had been otherwise; and the Instances there mentioned are full to this, as *John Quick*'s Indictment was only for Words to King *Henry*, unless standing

ding up and ſpeaking will alter the Caſe: *Thomas Koiver's*, *John Clipſham's*, and *John Mirfield's*, are all for Words, and ſome others there ſpecified. Beſides, it's obſervable that in moſt Indictments on this Statute, ſome Words have been alledged in them as an *overt fait* to demonſtrate the Imagination, which would be impertinent if the Law were thought otherwiſe. I'll not inſiſt on *Colledge's*, becauſe the Caſe hath been cavilled at, though with no colour as to the Indictment: Part of *Patrick Harding's* Indictment was *loquendo publicavit*, but I'll not dwell on that, becauſe fooliſhly drawn; but *Arthur Crohagan's* Caſe in *Cro. Car.* is pretty full and for Words; and the Words of the Book are, That the traiterous Intent and Imagination of his Heart was declared by his Words, and therefore held High Treaſon within the expreſs Proviſion of 25 *Edw.* 3. and upon his coming into *England* he was arreſted, *&c.* Now no Anſwer can be to this, but that he came into *England*; but the Words only ſhewed his Intent, and by that Book the Words are alledged as the *overt fait*; beſides the Caſe of *Blanchflower* and *Atwood*, *Mic.* 5 *Jac.* 1. *B. R.* in *Yelverton's* Reports 107. *per curiam*, reſolved, that Words may be Treaſon; and that is an expreſs Reſolution; for there was then no temporary Law in being concerning Parole Treaſons that I know of. The Caſe of *Berisford* and *Preſſe. Hill.* 8 *Jac.* 1. *B. R. Yelvert.* 197. adjudged, that Treaſon may be committed by Speech as well as by Act, for any thing which diſcovers the Mind of a Man to be Traiterous to his Sovereign, is capital to the Party: *Hitcham ad Brook Paſch.* 1 *Car.* 1. *Hutt.* 75. held *per cur.* that the ſpeaking of Treaſon was Treaſon, and that *ſermo eſt index animi* as well as Preaching or Writing; and no Man can doubt but thoſe are Acts; and Speech is as much ſo.

Beſides, if the Conſequence of the contrary Doctrine be well conſider'd, 'twill appear to be a plain Evaſion of the Statute of 25 *Edw.* 3. as is manifeſt upon the reading it; and the common Books are full of this, for otherwiſe no Action could lie for ſaying a Man hath ſpoke Treaſon: But here's enough ſaid to anſwer the Challenge, where's the Authority for ſuch an Aſſertion? Though infinitely more might be ſaid for it, nay 'tis as eaſie to dumbfound the contrary as 'tis to tranſcribe Law Caſes. If this doth not give them ſatisfaction, they ſhall remain unſatisfied for me, I'll plague the World no more with writing on this dull, flat, unprofitable Subject, Crown-Law, leſt I ſhould provoke our new Scriblers to double the Plague by their Replies: If they attempt an Anſwer, I'll leave the Tobacconiſt and Grocer to confute them; and unleſs a Trunk or Band-box chance to bring them to my View, I'll never be tempted to read them; and of this they may aſſure themſelves. I ſay it to complement the Reader with Patience to peruſe the reſt of the Sheet, being aſcertained never to hear more on't, at leaſt not from this hand.

Some perhaps may wonder at the reaſon of the Publication of theſe Sheets, and conceive them the product of Malice on one ſide, as thoſe virulent Pamphlets are on the other: To ſolve that Scruple, I need only repeat the Reaſons alledged in the firſt; but a Repitition is damnably dull, as well as tedious and irkſome: I'll therefore add a new one, and that's to ſhew the Reaſonableneſs as well as the Neceſſity of a general, indefinite, ſpeedy Act of Oblivion; for though the Bloud-hounds fret, and huff, and bounce, as if all their Madneſs and Rage were founded on a true *Baſis*, yet 'tis apparent from the Premiſes, that their foundation is falſe, and the Law is direct and plain in their Teeth, and doth and will juſtifie in moſt of the particulars, at which they foam their Curſes and Execrations: Reaſon therefore as well as neceſſity enjoins a ſilence as to what is paſt, for otherwiſe the Kingdom can never have it's deſired ſatisfaction, for in points juſtifiable, or at leaſt doubtfull; the juſtice

ſtice of inflicting Puniſhments can never be vindicated, did I call them Puniſhments, I beg the Readers Pardon for the Impropriety ; however I'll not name their proper term, but with calmneſs, endeavour to Evince three things.

1. That it would be gratefull to the Nation in general, and every good Man in particular. 2. Conducing to the Settlement and Interreſt of the preſent Government ; and laſtly, That 'tis conſiſtent with the promotive of the higheſt and trueſt Juſtice.

Firſt, The Nation did and doth expect it, for Revenge is never natural but when freſhly purſued, and time wears off the ſenſe of Injuries, by the Intervention of new ones either real or imaginary, which is all one as to this purpoſe : The horror of any Crime, or at leaſt the deteſtation of the Criminal, grows faint and languid upon the removal of the Object, eſpecially if time interpoſes with the acceſſion of preſent fears, which at preſent do more affect us than greater if more diſtant. It can never therefore be thought the deſire of the People of *England* to have their Neighbours or Acquaintance harraſs'd and perſecuted by Fines, Confiſcations, Impriſonments, Marks of Diſgrace, or the like, for Actions done in the laſt or former Reigns, about which the World hath been ſo much divided, if lawfull or not : Beſides, that this was the general Expectation of the Kingdom on the new Settlement or at leaſt the Coronation, of which nature there never was an Inſtance before this without an Act of Grace ; and it is moſt plain, that none are Adverſaries to it, but the *Republicanes* and the *Jacobites*, not for that they need it not, as I ſhall ſhew anon, but for different ends, each drives at and wiſhes a Change, it matters not to what, for if to the latter the other hopes a Common wealth will be the more deſirable : If the *Republican* ſucceeds, then the other believes a Reſtoration the more eaſie, but both diſlike the preſent, and therefore dread a Settlement, and conſequently dread the People's ſatisfaction, and quiet under Their Majeſties, and conſequently dread an Act of Indemnity : 'tis true, the cry for Vengeance is loud, but 'tis only from theſe two corners ; which leads to the ſecond particular, that

It will eſtabliſh and promote the Intereſt of the preſent Government, while the popular Bully is full of his Damme's and Menaces, there's certainly danger, and where there's danger there's fear ; now fear cauſes an averſion, and averſion begets hatred: And the Object of it is that from whence the ſuppoſed danger ariſes, which is from the Government irritated by the Venom and Fury of thoſe hot headed Animals, whatſoever hath power and will to hurt me, muſt and will be abhorr'd ; and though none are immediate actual Patients, yet the being poſſibly obnoxious to it, and the want of ſecurity for the contrary doth of neceſſity cool their reſpect to the preſent Power, under which they were not ſafe ; and this tempts them and their Friends upon contrivances and attempts of Danger, both to Themſelves and the Publick ; and danger by the attempt is no diſcouragement where the like danger attends their forbearance : And this is of weight, unleſs *Cromwell*'s Polliticks be thought Chriſtian, to cheriſh and promote a Plot, as of advantage to Settlement, if ſeaſonably diſcovered and ſubtilly managed ; but however 'tis as true, that Enemies who are deſperate ought never to be thought inconſiderable ; for they may ſhake and batter what they can't deſtroy, they may do miſchief though they can't work ruin to their Adverſaries, upon which account the temptation of coutinual impending Danger is fit to be removed : Beſides

The want of Security, and the fear of Danger, making Men uneaſie in their thoughts, repleniſhes them with Complaints and Murmurs at every awkard Action, or ſuppoſed miſcarriage

miscarriage of the Government feared; it makes them Mutineers at publick Taxes and Impositions, partly because they think it strengthens and increases the power of hurting them, and partly because it sponges and bleeds them of that, which they fear an occasion of themselves to bribe Black-rods, Sergeants at Arms, and other Goalers with; and in a conjuncture when extraordinary Aids are indispensibly requisite, no temptation to complaint is deserving of Countenance; besides, that it cramps Trade and discourages Projects for Publick Good, &c. but farther, it's the living, not the dead, the happy, contented, and chearfull, and free, not the oppressed, miserable, forlorn, or imprisoned Subject, that doth Service to the Crown and the Publick.

It hinders all such as are thought to be so obnoxious from any bold Essays for the use of the present Government, for that if success be the attendant of such their attempt, they continue unsafe notwithstanding, for no Man will adventure an hazard to secure that Authority, which he is not sure will make him safe, if he doth undertake the present Adventure, and escapes that Danger, and performs the Service; so that Self-preservation renders it their Policy to unhinge themselves from, or to be shy of the present Power; of which a considerable number might prove usefull Friends, which are now Newters at least, if not Enemies.

It's observable in all foreign Policies, either to work a total Extirpation of the whole Party, or an universal Indemnity, after so grand a Revolution as this was; the former is not to be practis'd here for two Reasons: 1. Because we want People: 2. Many of our Friends must be banish'd too, for divers of the supposed Criminals were instrumental to the present Change, &c. *Ergo* the latter only is, and can be most advisable; for once I'll suppose their numbers but small in comparison to the Saints and Innocents, (if any such there are in the Nation) yet under our present Circumstances all are to be obliged as Friends that possibly may; but if the thirteen Heads, with the Surrenderer's Clause, and all it's and their Subdivisions had been reduced into a Law in the designed Act of Attainder, one third at least of the Nation had been involved, who with their disobliged Relatives and Dependants is not so contemptible a Flock, though but of Sheep for the slaughter. Besides,

It's impolitick as well as unjust to deny or delay it to those who have submitted to the Government, yielded it Obedience, and quietly bore it's publick Charges according to their Proportion, and yet give a free, full, and general Pardon, both in *Scotland* and *Ireland* to all that took up Arms, for all their Sins then past and present; it provokes the former to repent their non-concurrence with the latter, for 'twas but resuming their Quiet and Submission at pleasure, and then they were safe, which now they are not, but under continued Menaces and Dangers both, as appears in their being baited by every barking Cur, that can but write with Gall in his Ink, or speak with a Damme in his Mouth.

Experience farther tells us, that nothing turns or changes the humor of the *English* Commoner, like Rage, Insolence, and Cruelty in their fellow Subjects, when made Superiors, and such is raking into old Sores thought to be; it matters not whether justly or no as to this purpose, the effect is generally such: The Star-Chamber in *Car.* I. his time, the Major-General's in *Cromwell's*: The Tophamizing of Abhorrers in *Car.* II. his time: The Western Campaign, and the other criminal Prosecutions in the beginning of *Jac.* I. I say all the Violences used in these several periods (and yet they had their respective Provocations) did most notoriously alter the kidney of the Commons, and made even their once

beloved, first dreadfull and terrible, then odious and loathsome; they produced considerable Changes in their several Consequences: I could come nearer home even to the tearing of *Moore* and *North*, and other Citizens of *London*, which first turn'd the Stomach of that City, as is now apparent; but *Sat verbum*, &c. But farther,

The want of this renders both the Policy and Honor of the great Bellowers for Vengeance to be justly suspected: 1. Their Honor in taking care of their own Servants for all their Excesses upon the Revolution, and opposing the Indemnity of all others, as by the Act appears: 2. Their Policy, for that it's observable in Story, that the Association in Queen *Eliz.* time was under a Protestant Prince for the Protestant Religion, and no ill Success attended it, yet those wise Ancestors of ours thought fit to secure themselves by turning the Association into a Law, and a general Act of Indemnity; I do not say they needed it, but the Associators in that Reign thought it needfull; and 'tis very considerable, that in no Reign was there more Peace and Quiet than in Hers, and in none were there ever more free and general Pardons, and in truth the latter was the occasion of the former; for when Men are once safe and quiet, no small Temptation will provoke any more adventures though they like another better, yet Men being easie are generally contented; There was one free and general Pardon of the Queen's at first confirmed, 5. *Eliz.* cap. 11. another, 8 *Eliz.* cap. 18. 13 *Eliz.* cap. 28. 18 *Eliz.* cap. 24. 23 *Eliz.* cap. 16. 27 *Eliz.* 13. 29 *Eliz.* cap. 9. 31 *Eliz.* cap. 16. 35 *Eliz.* cap 14. 39 *Eliz.* cap. 28. 43 *Eliz.* cap. 19. Eleven in number, and never five years without a Parliament-Pardon, and this made Parliaments and Crowns the darlings and desire of the People. Besides, It's the Interest of each party amongst us, though some don't see it; the *Whigg* ought to promote it for two Reasons: 1. Lest being the lesser part he chance to feel the want of it, and for that he has given some Provocation. 2. That if he be the greater, the Memory of his Vengeance and Fury may be forgotten, and himself restored to the good Opinion of the rest of Mankind, by one act at least of good Nature: The *Tory* ought to pursue the same measures, and much for the same Reasons, for his Top-gallantry hath been, and if repractis'd will be again as odious and loathsome to the moderate and good, as ever it was, or as the others could be: Temper therefore is now the Game, and a Veil over all that's past is certainly the most Politick, especially considering the multitude of the supposed Criminals, and the justice of their several Excuses, which comes next: For,

Lastly, It's consistent with and promotive of the truest and highest Justice, for in most of the Cases the Law is doubtfull, and to punish Opinion in matters of Law, is as unjust as to persecute mistakes in matters of Religion is unchristian, and new Laws for Government *de futuro* are more agreeable to natural Equity, than a retrospective Fury; that it is so, is plain, the modern Scribles have sufficiently proved it. In two of the Cases cited they differ themselves, for Dr. *Story*'s Case, the Defender crys 'tis not Law, the Remarker agrees 'tis, and that he was well hanged; for *Plunket*'s Case, the Defender cries, he was well hanged, for there was Treason enough in his Charge, the Remarker insinuates as if he suffer'd hardly; now what shall a little Lawyer believe between these two great bodies of learning? the like may be said of *Soames*'s Case, and the other above mentioned: But what is more? In the Voluminous Argument against the *Dispensing Power* owned by Sir *R. A.* he doth concede that there are some Prerogatives so personally and inseparably inherent in the Crown, that no Act of Parliament can cramp or diminish, or at least take away; and that being granted, I'm sure all that the rest of the Book says can never make that a plain Case, and

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in truth his own Argument ſhews and and leaves it a diſputable Point; and if that were doubtfull, every particular elſe may well be buried in Oblivion: beſides in Caſes of Conſtruction the nature of the thing admits of doubt, and then there's no colour for Puniſhment. Beſides,

In reſpect of inferiour Perſons by our Conſtitution they are obliged to ſubmit to and follow *Weſtminſter-Hall*, which is the *lex loquens Angliæ*, and when all theſe things are duly conſidered, there will remain but few grand execrable Criminals, who are fit to be made Examples of, only to tickle ſome, aggrieve others, and terrifie none; for that will be the conſequence; for that's the caſe of all Violence, where the Juſtice of the thing is not clear and undoubted. Then for Exceptions:

Let us think a little; Is it reaſonable that ſome ſhould ſuffer for not being affraid of Puniſhments never declared or promulgated, and others ſhould eſcape, becauſe their Countenances are more fawning, or that by conſent their Relations have plaid on the other ſide, or that their ſwinging Fortunes enable them to ſcatter Mice for their perſonal Indemnity, or that they have had the lucky Principle of being faithfull to all Changes, and true to nothing elſe, or that they have been forward to ſubvert their old Maſter, after their fire and folly had ruined him, and endangered themſelves: theſe and ſuch like are no Pleas for Juſtice, and yet this is the Caſe. Farther,

The drift is to magnifie and aggrandize Puniſhments by Bill, which by the ſtanding Laws and common Juſtice of the Realm could not be inflicted, and they urge two Reaſons for it, 1. Their particular Pardons will otherwiſe excuſe them. To that I anſwer, Either they are valid in Law or not, if not, there's no need of Bills; if they are valid in Law, the ſame Law and Juſtice of the Land enjoin their allowance; even the ſame Law by which the Countrey-man plows his Land, the Gentleman receives his Rent, the Trader recovers his Debt, and the Senator ſits in the Houſe; and by the ſame Reaſon that theſe enjoy their Properties, the Criminal ought to have his Pardon allowed, for one's a right accrued by the Law as well as the other. 2. The common Chanel is too ſmooth; Severity is ſometimes neceſſary, and that now if ever; and therefore the Legiſlative Authority ought to exert its power, and puniſh according to demerit. To anſwer that, I ſay, either they are no offences by Law, and there needs a Bill to make them ſuch, and inflict evils upon them as ſuch; or elſe they are offences, but deſerve a greater Puniſhment than a common Court may pronounce: Now if the firſt be the Caſe, then I'm ſure 'tis rank palpable tyrannical Injuſtice, and that's the Plague of living under an an Arbitrary Power, for none can know what's not Criminal: If they mean the latter, as I ſuppoſe they do, then I ask, to what end were Puniſhments invented in Societies, but to reſtrain Men from doing particular actions through the power and influence of Fear? And how could that Conſequence be expected, when the penalty was never known before 'tis inflicted? and to inflict an evil afterwards, which was not known before, is to make a man ſuffer that which he could not fear, becauſe he could not know it, and this becauſe he did not fear it: And the Juſtice of that is plain too.

I agree with the Satyriſts, that there are ſome Precedents of this laſt method of proceeding, but moſt of them are repealed; I'll name two that are ſo, the Earl of *Strafford's*, which the very Law it ſelf did enjoin Poſterity not to obſerve, or follow, or doe the like; I can't forget one expreſſion of his to this effect upon the Tryall, if there be an Errour in a Judge, ſo that he give a ſentence otherwiſe than a Man of better underſtanding conceives

ceives Reaſon for, there's no cauſe the offence ſhould be hightened, becauſe he was not ſo wiſe a Man as he might have been, nor ſo underſtanding as another; which if allowed, will make it more eligible to follow a Plow than ſerve a Government, to dig in a Ditch than bear an Office; for all Men ſtand obnoxious to the Conſtructions and Paſſions of ſucceeding Times. There's one Inſtance more, and that was Sir *Tho. Haxey*'s, who was attainted of Treaſon, for bringing in a Bill into the Commons Houſe againſt the Prerogative, though while and as a Member: I ſuppoſe the Sparks will not much applaud the juſtice of that Procedure for their own ſakes; but as I ſaid before, that, and moſt others of their Precedents, were repealed, when a cooler Aſſembly met upon the next Seſſion, and ſo was *Haxey*'s, in 1 *Hen.* 4. *Cott. abr. rec.* 362, 363.

But if Vengeance be requiſite, it ought to be without reſpect of Perſons, the *Juſtice* of it ought to be *impartial*, *true*, and *Catholick*: and then come in the Penſioners and Surrenderers, the Regulators and Promiſers, the old High Commiſſioners, and the new Creed Makers, *&c.* and, God knows, *quis non? &c.* Nay, ſince the Revolution ſome muſt come in for a ſnack of Cenſure too, the buyers and ſellers of Places, the Members that took Offices contrary to their own Motion and Vote in the *Weſtminſter* Parliament: The Proclamation-men for prohibiting of importing *French* Commodities under pain of Confiſcation of Ship and Goods, three Weeks before a War proclaimed, contrary to eleven Acts of Parliament for Free Trade, even in Parliament-time: the Treaſury for farming Lotteries, which are common nuſances, contrary to multitudes of Statutes, and continuing them ſtill with *non obſtante*'s in the Indenture, though illegal, and void *ab initio*: the great Seal for paſſing four Patents at one Seal in this *Lent* Vacation, with *non obſtante*'s, contrary to the Bill of Rights: the new Sheriffs for practiſing what themſelves condemn'd in a *Moore* and a *North*, *Cum multis aliis, quos nunc deſcribere longum, &c.* To conclude, our Saviour's Rule, if obſerved, will be the moſt infallible Indemnity that can be contrived, and that is, *John* 8. 7. *Let him that is without Sin amongſt you, caſt the firſt ſtone.* And in truth a Cenſor of the Manners of others ought himſelf to be pure, clean, and innocent *in omni re quacunque*; and if there be no danger but from ſuch, I m ſure there's no danger at all, and that it ſhould be ſo, is the trueſt Juſtice in the World, *quod fuit probandum.*

I'll not mention the Argument from the Vacancy, that the Government was diſſolved, every thing reduced into its primitive ſtate of Nature, all Power divolved into individuals, and the particulars only to provide for themſelves by a new Contract; for if ſo, there's yet no new conſent for Puniſhment of acts done before the Diſſolution, and conſequently revenge for that is at an end; Indemnity therefore ought to be promoted by thoſe who made that Vote, for otherwiſe their truth may be ſuſpected, *&c.*

POSTSCRIPT.

SOme perhaps will blame the boldneſs of this Style, as provocative rather than palliating; to which I ſay, Truth ought never to be ſhame-faced, for *veritas prævalebit* one time or another; and if it do not, but angers ſome, 'twill be only thoſe that were implacable before, who if they ha n t good nature enough to pardon a bold ſtroke or two with a Pen, they'll ne'er conſent to an Act of Indemnity, and then their Fury is not to be regarded, for the want of it will inflame (as it hath created) our preſent Diviſions, and conſequently run us at laſt into a true Confuſion, from which, *Good Lord deliver us.*

THE END.